of approval, and matters for disclosure to homebuyers. Such information is readily available to the developer since it was generated through the course of the development of the property. New effort on the behalf of the developer is required to form the HOA, produce the project CC&Rs, produce contract documents, and various arrangements related to common area and the association. The public report application review is discussed in further detail in the section on the SLA on pages 56-68. It is beneficial to the developer's critical path schedule to complete the documents required for the application submittal as soon as possible after land use entitlements have been approved. The developer may wish to apply for a preliminary or conditional report described in the SLA section.

The typical home sale occurs when a homebuyer signs a sales contract. The contract is often signed in advance of the home being completed. Once the home is completed as evidenced by a certificate of occupancy or final inspection by the local agency, the homebuyer has a certain period of time to inspect the house and note any corrections that need to be made. The home sale then closes escrow, at which time title is conveyed to the homebuyer, and the homebuyer becomes a member of the HOA. Interaction between the builder and the homebuyer may continue regarding warranty items – defects in the home to be corrected by the builder – and through the HOA as long as the builder is a member of the association.

LEGISLATION RELATED TO SUBDIVISIONS AND THE SUBDIVIDED LANDS ACT

California statutes are contained within 27 different codes that have been adopted by the state legislature since 1867. The SLA, which is part of the BPC, refers to seven other codes:

- The Health and Safety Code (Section 18214 at 11000)
- The Government Code (Sections 66424 et al., Map Act at 11000 et al.)
- The Corporations Code (Section 25000, at 11000.1; Section 25100 at 11003.2; Sections 7312 and 25113 at 11010.8)
- The Civil Code (Section 783 at 11004.5 et al.; Section 1351, the Davis-Stirling Act, at 11003 et al.; Section 817 at 11003.4; Section 1102.6 at 11010; Section 3482.5 at 11010l; Section 51 at 11010.5)
- The Code of Civil Procedure (Section 1018 at 11007; Sections 415-417 at 11019)
- The Public Resources Code (Section 21000 at 11018.14)
- The Penal Code (Section 1170 at 11020 et al.)

Most of these references are inconsequential to the substance of the SLA, but several of these laws are integral to the operation of the SLA. Several provisions of the California Government Code and the California Civil Code relate to the SLA. In fact, it would be difficult to understand or comply with the SLA without having a general understanding of these related statutes.

The Government Code, of which the Map Act is a part, is the compilation of laws governing how the state and local governments will function. Thus, it would be expected that the scope of the Map Act would be broad, covering basic functions and general operations of various governmental agencies.

The Civil Code, of which the DSA is a part, governs the general obligations and rights of citizens of California. In the case of the DSA, it governs the rights and obligations of members of homeowners associations. The SLA also refers to the Civil Code in defining a Limited Equity Housing Cooperative, which is exempt from the SLA under certain conditions.

The BPC, of which the SLA is a part, governs the interaction between government, businesses, and consumers. It is the BPC that authorizes the office of the Real Estate Commissioner, who is responsible for the enforcement of the SLA and other real estate regulations.

The Corporations Code is referenced in the SLA in the context of determining whether the subdivision or subdivider falls under the securities provisions of the Code. The DSA references the section of the Corporations Code relating to nonprofit corporations.

Regulations of the Real Estate Commissioner – Subdivisions

The Regulations of the Real Estate Commissioner are codified in Chapter 6 (Real Estate Commissioner) of Title 10 (Investment) of the California Code of Regulations. The Commissioner's Regulations consist of 36 Articles. Article 12 addresses subdivisions in Sections 2790-2804. These regulations are the basis on which applications for public reports are reviewed and issued by DRE staff.

California Environmental Quality Act

CEQA, California Public Resources Code Sections 21000-21177, was adopted in 1970. The law requires government agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. Approval or issuance of land use permits or entitlements for private projects is an action that requires analysis under CEQA. Some agency actions are exempt from CEQA either statutorily or categorically. Statutory exemptions are actions approved by the legislature within the law itself such as maintenance activities, emergency projects, and planning and feasibility studies. Categorical exemptions are actions that fall within a class shown to have no significant impacts such as specified activities related to existing facilities, certain replacement or reconstruction projects, and normal operations. Unless a project is exempt from CEQA, the local agency must perform some level of analysis under CEQA resulting in either a "negative declaration" or an "environmental impact report."

A subdivision is considered a project under CEQA; therefore the analysis required by CEQA must be performed prior to approval of the project. CEQA uses the term "lead agency" to define the agency that has the principal responsibility for carrying out or approving a project. In general, the local government agency approving the subdivision is the lead agency, and thus, it is incumbent upon the local agency to satisfy the requirements of CEQA when approving a subdivision.

When the DRE issues a public report, it is in a sense issuing a permit for the developer to sell interests in the subdivision. It is therefore important to consider how CEQA applies to public reports. CEQA uses the term "responsible agency" to define a public agency with discretionary approval authority over a portion of a CEQA project, which would seem to apply to the DRE's role in the subdivision process. However, BPC Section 11018.14 of the SLA explicitly states the Commissioner (DRE) is not a responsible agency, and that receipt by the Commissioner of a copy of an environmental impact report or negative declaration shall be conclusive evidence of compliance with that act for purposes of issuing a subdivision public report. Thus, the local agency's CEQA compliance satisfies the DRE's obligations under CEQA, and documentation of such compliance would be submitted to the DRE as part of the public report application package.

Davis-Stirling Act

The DSA was adopted as California Civil Code Sections 1350-1378 in 1985. On August 17, 2012, Assembly Bills 805 and 806 were signed into law. AB 805 relocated the DSA to Civil Code 4000-6150, and AB 806 updated references within other statutes to the new Civil Code Sections. These laws became effective January 1, 2014.

The DSA defines common interest subdivision types – condominiums, planned developments, community apartments, and stock cooperatives. Various laws, including the SLA and the Map Act, refer to the DSA for such definitions. The DSA also contains definitions for various terms used in subdivision development and HOA governance. These definitions are noted in other sections of this study.

The DSA specifies governance requirements for CIDs – condominiums, cooperatives, and planned developments. Under the DSA, a CID must be managed by an HOA, which may be either incorporated or unincorporated. Incorporated associations are affected by the Nonprofit Corporation Law. Most HOAs are incorporated as nonprofit mutual benefit corporations.

Most of the DSA concerns the ongoing operation of HOAs while the SLA and the DRE's activities under the SLA are concerned with the *formation* of HOAs and the operation of the HOA during the period of developer involvement. As noted above, it is common for homeowners in CIDs to contact the DRE with regard to issues that arise after the developer is no longer involved, but this is beyond the authority of the DRE. The DRE reviews the legal framework of all new CIDs to ensure compliance with the SLA as part of the public report application process, before homes are offered for sale to the public. Once sales have commenced, the DRE's jurisdiction is limited to the subdivider's obligations under the public report, which does not include intervention in association disputes.

The DSA is discussed throughout this study as it pertains to the subdivision and public report processes.

Subdivision Map Act

Generally speaking, compliance with the Map Act is the starting point of compliance with the SLA. That is, a property must be legally subdivided before it can be marketed to the public, and marketing subdivisions to the public is the subject of the SLA. Much of the information submitted to the DRE as part of a public report application is dependent on completion of the Map Act process such as the subdivision map, title information, legal descriptions, conditions of approval, etc. Therefore, the Map Act is covered in some detail in this section.

The Map Act is codified in Division 2 (Subdivisions) of Title 7 (Planning and Land Use) of the California Government Code, Sections 66410-66499.58. The Map Act consists of eight chapters: Chapter 1: General Provisions and Definitions; Chapter 2: Maps; Chapter 3: Procedure; Chapter 4: Requirements; Chapter 4.5: Development Rights; Chapter 5: Improvement Security; Chapter 6: Reversions and Exclusions; and Chapter 7: Judicial Review.

The Map Act is the law that governs the legal process of subdividing real property in California. California's first subdivision law was adopted in 1893. The Map Act was originally adopted in 1907. The modern form of the law generally resulted from amendments adopted in 1929 and 1937. The chronology of the Map Act precedes the SLA by just a few years. The SLA was initially adopted in 1921 with many of its subdivision controls adopted by amendment in 1933.

The Map Act is a logical extension of the recording system. The subdivision process is the mechanism by which new interests in real property are created. The law establishes the procedures by which marketable title can be created. Before real property can be transferred between private parties such as between a developer and a homebuyer, the property must be legally subdivided. Government Code Section 66499.30, subdivisions (a), (b), and (c) enforces the requirement of map approval by prohibiting the sale, lease, or financing of property until compliance with the Map Act has been obtained, typically by the recordation of an official map for the subject property with the County Recorder.

Students of real estate learn that before real property is transferred, it must also be properly identified. This identification is accomplished by referring to a valid legal description of the property. The three main types of legal descriptions are "metes and bounds," "township and section," and "recorded map" (sometimes referred to as lot, block, and tract). A recorded map legal description is the end result of compliance with the Map Act.

Although the Map Act is a state law, it vests regulatory and legislative authority with the local agency (the city or county, if the project is in an unincorporated area) within which the project is located. The Map Act specifies the requirements that must be met for the local agency to approve a subdivision, but the law also empowers the local agency to impose requirements of its own. Major objectives of the Map Act are to coordinate a subdivision's design with the community's development plans and to insure that the subdivider will properly complete the areas dedicated for public purposes so they will not become an undue burden upon the taxpayers of the community.

In approving subdivisions, the local agency must find that the proposed division of land complies with the requirements of the Map Act and local ordinances. Such requirements address land area, improvement design, floodwater drainage control, improved roads, sanitary disposal facilities, water supply availability, environmental protection, and other conditions.

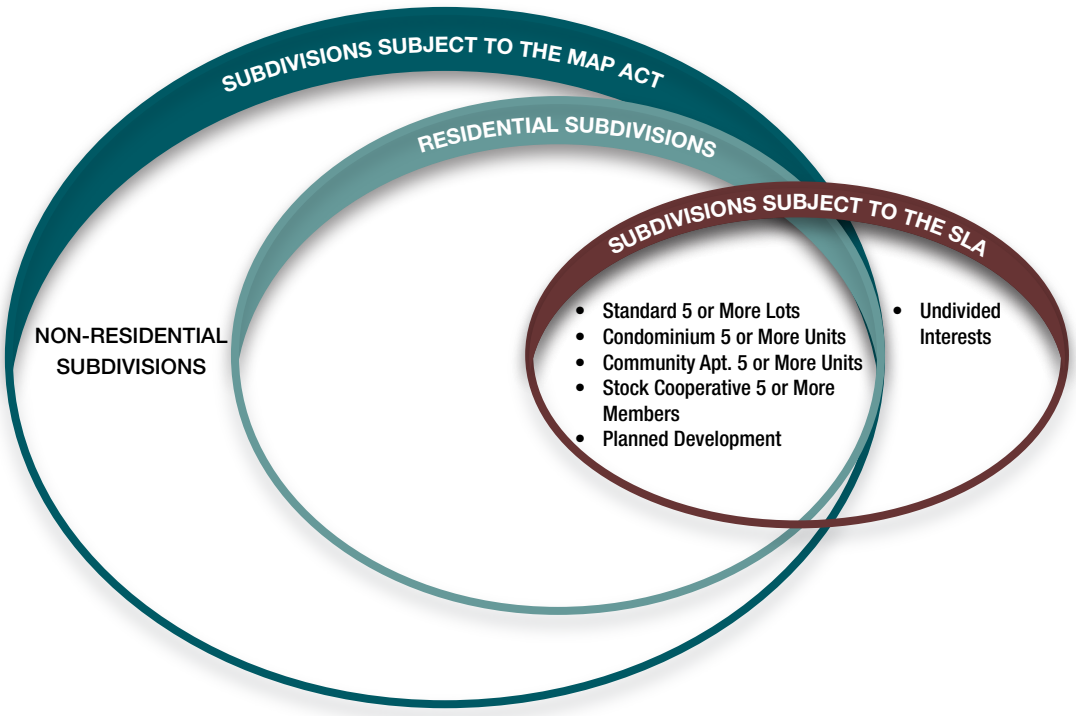
Subdivisions Subject to the Map Act vs. the SLA

Government Code Section 66424 of the Map Act defines a subdivision as "the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, or financing, whether immediate or future." This includes condominium projects, community apartment projects, and stock cooperative conversions as these types of projects are defined in the DSA.

In defining "subdivision" in BPC Section 11000, the SLA explicitly states that the definitions in the SLA shall in no way modify or affect the definitions of projects that are subject to the Map Act (Government Code Section 66424), and thus, there are no conflicts between the definitions contained within each law. However, there are differences in the applicability of the laws to certain types of subdivisions.

Not all subdivisions subject to the Map Act are subject to the SLA, and not all subdivisions subject to the SLA are subject to the Map Act (see Figure 9). The applicability of the Map Act to various types of subdivisions that are subject to the SLA is further described below. One type of subdivision regulated by the SLA that is not subject to the Map Act is an "undivided interest" subdivision as defined in BPC Section 11001.1 of the SLA. Avoidance of the Map Act requirements and process is an advantage to developers of these types of projects. DRE review of such subdivisions would be expected to be more thorough since the DRE would not have the benefit of local agency review and approval of the project.

Figure 9 -The Scope of the Map Act vs. SLA



The SLA distinguishes between subdivisions of four or fewer interests and of five or more interests. Subdivisions of four or fewer interests are exempt from the SLA. The Map Act similarly distinguishes between subdivisions of fewer than five lots or parcels and subdivisions of five or more parcels. Subdivisions of four or fewer interests are not exempt from the Map Act; however, the Map Act establishes different procedures for such subdivisions as described further below.

The scope of the Map Act is broader than the SLA in that it is concerned with all types of subdivisions, not just residential. The mapping approval process is also more time consuming and complicated than the SLA's public report process. The mapping process always precedes the public report process since a subdivision must have been in compliance with the Map Act before interests can be legally sold.

Types of Maps – Tentative Map, Final Map, Parcel Map

The Map Act requires that every landowner proposing to subdivide property obtain approval of a subdivision map, which itself must comply with other local ordinances and regulations such as the local general plan and zoning code. Most local agencies have a local ordinance that implements and supplements the Map Act. Local regulations typically have minimum design standards relating to lot sizes, street widths, improvements that must be installed, etc.

There are two types of subdivision maps: a ***parcel map***, which is limited to a division resulting in fewer than five lots (with certain exceptions), and a ***final map*** (also called a tract map), which applies to a division resulting in five or more lots. A third map called a ***tentative map*** is the predecessor of a final map. A parcel map and applicable procedures are generally considered "minor" subdivisions compared to tentative and final maps.

Government Code Sections 66426 and 66428 of the Map Act specify whether a tentative and final map or a parcel map is required. Government Code Section 66426 requires a tentative map and final map:

> *A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs:*
>
> *(a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body.*
>
> *(b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.*
>
> *(c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths.*
>
> *(d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.*
>
> *(e) The land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2.*
>
> *(f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).*

A parcel map is required for those subdivisions described above. Government Code Section 66428 of the Map Act specifies that a parcel map is required for subdivisions when a final or parcel map is not otherwise required, unless the preparation of the parcel map is waived by the local ordinance pursuant to other sections of the Map Act. Simply put, a parcel map is required whenever a tentative map and final map are not required pursuant to the Map Act or local ordinance.

The Mapping Process

A developer proposing a subdivision that creates five or more lots or parcels must submit an application to the local agency for approval of a tentative map. The tentative map is a schematic drawing that shows the layout of the proposed subdivision along with all other information the local agency deems necessary such as ownership information, lot dimensions, street widths, topographical information, drainage, and utility layout, etc. The application will consist of the map itself and other supporting documentation specified by the local agency.

Upon receiving an application for a tentative map, the city or county staff will examine the design of the subdivision to ensure that it meets the requirements of the general plan, the zoning ordinance, and the subdivision ordinance. An environmental impact analysis must be prepared as required by CEQA and a public hearing must be held prior to approval of the tentative map by the local agency.

If the local agency approves the map, it will approve the map with various conditions such as requirements to dedicate land and/or easements to the local agency for public purposes such as for streets, utilities, and parks; construct public improvements necessary for the subdivision and dedicate them to the local agency; pay impact fees; etc.

Approval of the tentative map and related land use entitlements is a significant milestone in the subdivision development process. It represents the culmination of a costly and time consuming process, and provides certainty to the developer as to what conditions will need to be satisfied in order to complete the subdivision and to sell homes within the subdivision.

However, a tentative map is not recordable and it has no permanent legal effect unless it is followed by the approval of a final map by the local agency. The approved tentative map will expire unless the final map is recorded, or is extended by the agency or by state law. Prior to expiration of the tentative map approval, the developer must fulfill all of the conditions of approval. Once the conditions have been fulfilled, the developer will apply for approval of a final map by the local agency. Once approved, the final map is filed with the County Recorder, and once recorded, the legal subdivision has been accomplished.

Conditions of tentative map approval typically require public improvements to be constructed; however, the Map Act enables the local agency to accept security such as payment and performance bonds from the developer, which allows the map to be recorded prior to construction of improvements. This is an important provision for the developer in that it allows the map to be recorded much sooner and prior to incurring greater costs. DRE review of the security provided to the local agency for completion of the public improvements is part of the public report application process.

The Map Act is less prescriptive regarding the processing of parcel maps than of final maps. Government Code Section 66463 specifies that the procedure for processing, approval, conditional approval, or disapproval and filing of parcel maps and modifications thereof shall be as provided by local ordinance. Thus, parcel maps may be subject to a similar approval process as a tentative map including a public hearing, depending upon the requirements of the local subdivision ordinance. Depending on the complexity of the parcel map or related issues, the local agency is likely to impose a less intensive review process for parcel maps, consistent with the presumed intent of the law regarding minor subdivisions. The CEQA process may also be less intensive. CEQA provides a categorical exemption for "minor land divisions."

Common Interest Developments Under the Map Act

The Map Act applies to the same types of residential subdivisions as defined in the SLA – standard subdivisions, condominiums, community apartments, and stock cooperatives (including the conversion of residential property to condominiums, community apartments, and stock cooperatives). While the Map Act is silent about planned developments as defined in the SLA, these subdivisions must comply with the Map Act. BPC Section 11003 of the SLA defines planned development by reference to Section 1351(k) of the DSA (Civil Code Section 4175), which says:

> *"Planned development" means a real property development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:*
>
> *a) Common area that is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.*
>
> *b) Common area and an association that maintains the common area with the power to levy assessments that may become a lien upon the separate interests in accordance with Article 2 (commencing with Section 5650) of Chapter 8.*

Thus, the defining feature of a planned development is that there is an HOA that owns or maintains property. The existence of an HOA is not relevant to the Map Act. What is considered is the type and number of interests being

created. By the definition above, a theoretical minimum of three interests would be created – two separate interests and one common interest to be owned by the association. Therefore planned developments fall under the Map Act's definition of a subdivision in Government Code Section 66424 and, at a minimum, a parcel map would be required to create the interests of the planned development.

As a practical matter, the typical planned development is a subdivision of more than four separate lots where some common facility such as a private street, utility, or recreation facility is owned by an association. Such subdivisions would be accomplished with the processing of a tentative and final map.

Civil Code Section 4095 of the DSA contains an important provision that directly impacts the SLA's application to a subdivision. Under Civil Code Section 4175, a subdivision is a planned development if there is a common parcel owned by the HOA, or in common by the owners of the lots within the subdivision. If the common area is not a separate parcel, but consists only of mutual or reciprocal easements (typically, shared private driveways or private roadway easements over abutting parcels), then the subdivision is only a planned development if the HOA has the power to lien and non-judicially foreclose its lien pursuant to Civil Code Section 5650. Thus, a subdivision that includes no separate common area parcels and consists of lots served by private roadway easements would not be a planned development if the CC&Rs for the subdivision do not permit the HOA to lien and non-judicially foreclose its assessment lien. Consequently, if a subdivider created such a subdivision within a city, and provided the subdivider sold all lots with completed residences, the subdivision would be exempt from the final subdivision public report requirements of the SLA pursuant to BPC Section 11010.4.

Maps for Common Interest Developments – "Vertical" vs. "Horizontal" Subdivisions

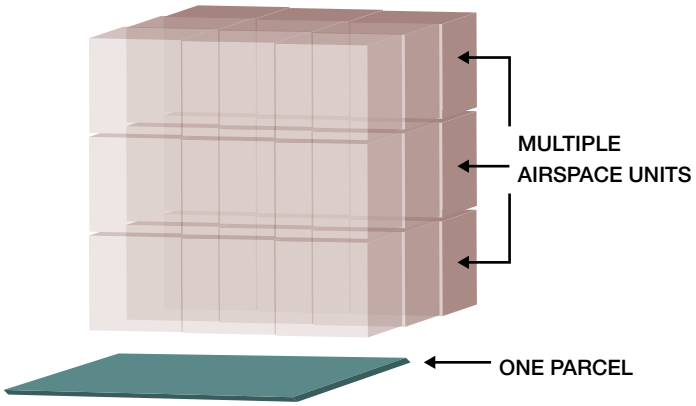
Typical subdivision maps – standard subdivisions or planned developments – depict the lots or parcels in two dimensions, creating a ***horizontal*** subdivision (see Illustration 10). Condominium, community apartment, and stock cooperative projects are unique in that the subdivided interests to be conveyed most often involve a subdivision of space above the land, creating a ***vertical*** subdivision (see Illustration 11). Meanwhile, there may be no physical difference between these types of projects and other projects that are not subject to the Map Act or the SLA.

Illustration 10 - Horizontal Subdivision

To illustrate this, compare three hypothetical projects:

- Project A is a 100-unit apartment project to be built on a 5-acre parcel. The construction of a rental apartment project is not a subdivision under the Map Act or the SLA.
- Project B is identical to Project A, except it is proposed as a condominium project where an HOA will own the land and building structures and the airspace within each unit will be owned by individual condominium owners. Project B is a subdivision under the Map Act and the SLA.
- Project C is a conversion of Project A to a stock cooperative after it has been built. Project C is a subdivision under the Map Act and the SLA.

Illustration 11 - Vertical Subdivision

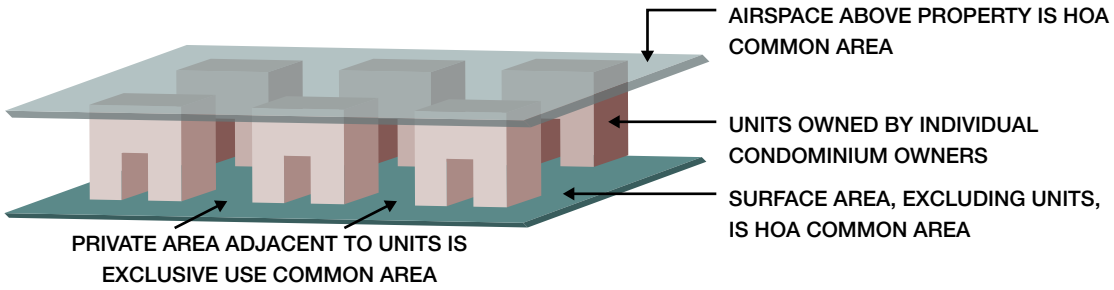


Although Project B will likely need to comply with different building code requirements, e.g., thicker common wall construction, etc., the physical improvements of all three projects will appear identical. The environmental impact on the local community whether the project is an apartment, condominium, or stock cooperative, would be expected to be the same. The difference between these projects is primarily legal.

The recognition that a vertical subdivision is a legal distinction rather than a physical one is contained in Government Code Section 66427 of the Map Act, which differentiates the local agency's authority to approve a two-dimensional map from a three-dimensional subdivision plan. The fact that a project is a condominium, community apartment project, or a stock cooperative should not be the basis for denying the project. The local agency is to consider the approval or denial of the project based on the parcels on the surface of the land; the agency may not deny a project based on the design or the location of buildings on the property so long as the design and building locations do not violate other local ordinances. Local agencies may consider building design and location in reviewing the project, but the basis of the review must be contained in the agency's other ordinances. The Map Act also does not preclude the local agency from adopting ordinances containing standards for vertical subdivisions. Some local agencies also recognize this by establishing a special application process for condominium projects that consists of a "tentative map for condominium purposes" or similarly titled permit. Nevertheless, Government Code Section 66427 allows the local agency to approve a condominium project's parcel map or final map without having to review the project's condominium plan and is often relied upon by condominium developers to streamline compliance with the Map Act. If the local agency has previously approved a parcel map or final map for the establishment of condominiums, then the subsequent recordation of a condominium plan is not considered a further subdivision so long as an HOA holds common property and the number of units does not exceed the number previously approved. This section is the basis for the development of "site condominium" or "detached condominium" projects, which replicate single-family detached subdivisions but have a "vertical" condominium ownership structure as illustrated in the diagram below (Illustration 12). These types of projects are not explicitly defined by the SLA, but would be considered condominiums under the SLA.

To the extent that interests in these vertical subdivisions are to be conveyed from one party to another, they need to be adequately described, just as lots in standard subdivisions do. Note that of these types of projects, only condominium projects have separately owned units. Other vertical projects give individual owners the exclusive right to use a unit or portion of the property. Condominium units are separately owned in fee and transferred by deed. Therefore, each unit must have an adequate legal description. The adequate legal description is accomplished by reference to a three dimensional map called a ***condominium plan***. The definition of a condominium plan is found in

Illustration 12 - Detached Condominium



the DSA, which defines it as a description or survey map of a condominium project, which refers to monumentation on the ground, and containing a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest. Similar to a subdivision map, the condominium plan is a recorded document.

Units in community apartment and stock cooperative projects are not separately owned and are not transferred by deed. In community apartment projects, the entire apartment project is owned by one entity; individual "tenants" own the right to exclusive occupancy of a unit within the project but they do not own the unit itself. Similarly, in stock cooperative projects, a corporation owns the entire project, and individual "shareholders" own the right to exclusive occupancy in a portion of the project. In neither case is evidence of ownership a recorded deed in the names of the individual owners. Evidence of ownership rights would be found in the ownership entity's management documents, which are not recorded. Note that undivided interest subdivisions are similar to the vertical subdivisions as described here, but they are not considered subdivisions under the Map Act. The evidence of ownership under an undivided interest subdivision will appear in the deed, which typically indicates the percentage ownership of each of the owners.

Phasing

The Map Act provides for project phasing in that it allows multiple final maps to be approved and recorded based on one approved tentative map. Thus, a developer may seek approval of a final map for only the number of units desired per phase, provided that the local agency's conditions of approval are met as applicable to that phase. When a phased final map is recorded, the balance of the property yet to be mapped is shown as ***remainder***. Subsequent maps will be a subdivision of the remainder parcel(s).

The Map Act also allows for the phasing of condominium projects pursuant to Government Code Section 66427(b). Section 66427(e) also permits the condominium plan to further subdivide the property subject to the plan into multiple legally separate divisions of real property, without needing any additional local agency approvals, provided the total number of condominium units established is not increased above the number authorized by the local agency when the parcel map or final map was approved. This subsection serves as the legal basis for the creation of a multi-phase condominium development within a single lot or parcel.

Conversions to Common Interest Developments Under the Map Act

The regulatory process for the conversion of an existing residential property such as an apartment building into a condominium, community apartment, or stock cooperative is similar to the process for a new construction project.