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# SEGMENTATION

## PARTICIPATION AND COMPLICATIONS

*League of California Cities  
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# Topics

- What is “segmentation?”
- Where does segmentation fit into the conflict of interest analysis?
- The evolution of the concept and the tool of segmentation
- The elements of the Segmentation Regulation
- How to use the tool of segmentation
- Unanswered questions
- Recommendations and advice





# What is Segmentation?

A division of a governmental decision into separate and distinct components arranged to allow a public official with a conflict of interest in one component to recuse from that component but be allowed to participate in other components of the decision

Regulation Section 18706





# MAKING IT WORK

My Experience



# Where does segmentation fit into the conflict of interest analysis?

## STEP 1

Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?

## STEP 2

Will the reasonably foreseeable financial effect be material?

## STEP 3

Does the public generally exception apply?

## STEP 4

If no exception, then the official has a conflict of interest and may not make, participate in making, or in any way attempt to use the official's position to influence the governmental decision.

**CONSIDER SEGMENTING THE DECISION**



# Types of decisions are amenable to segmentation



General plan updates  
Including the land use designations assigned to properties in a city and the selection of sites for the City's affordable housing inventory



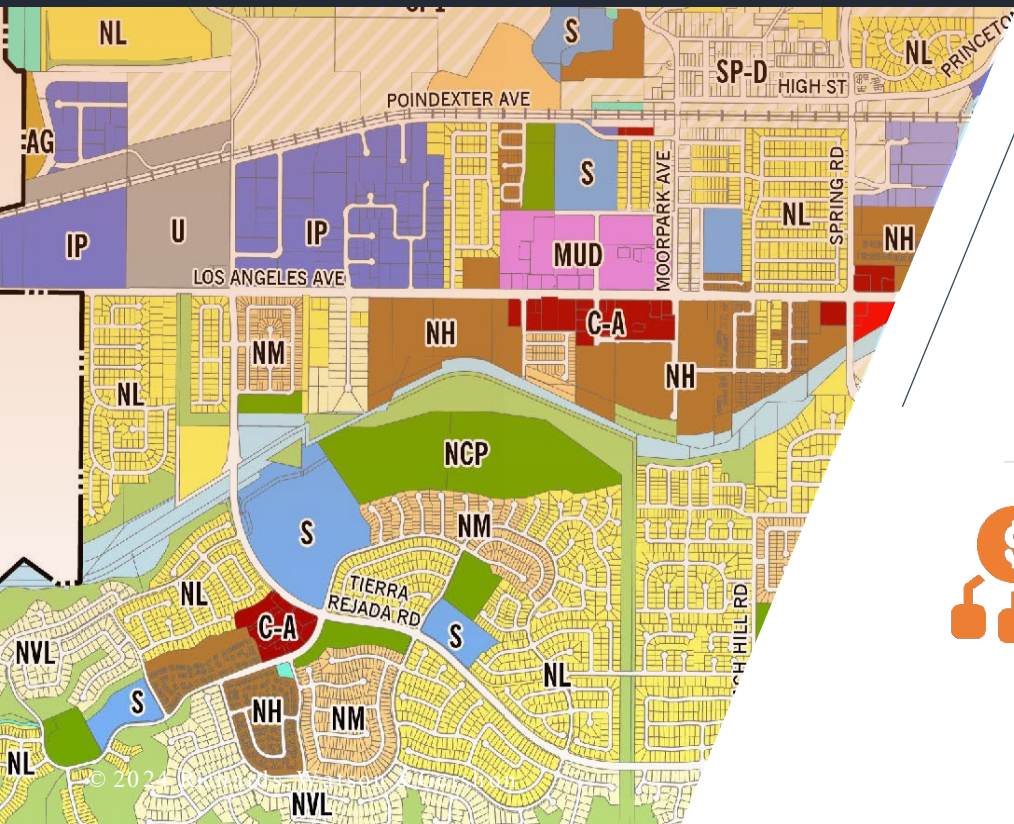
Comprehensive zoning code updates  
Including the adoption of a city-wide zoning map



Downtown specific plan decisions  
Involving parcels not in proximity to an official's interests



Adoption of a city-wide budget  
Including the approval of a city-wide capital improvement plan






# What about the other exceptions?



Public Generally  
Exception?

A significant segment will also be affected and the official's interest is not uniquely affected compared to the significant segment of the public

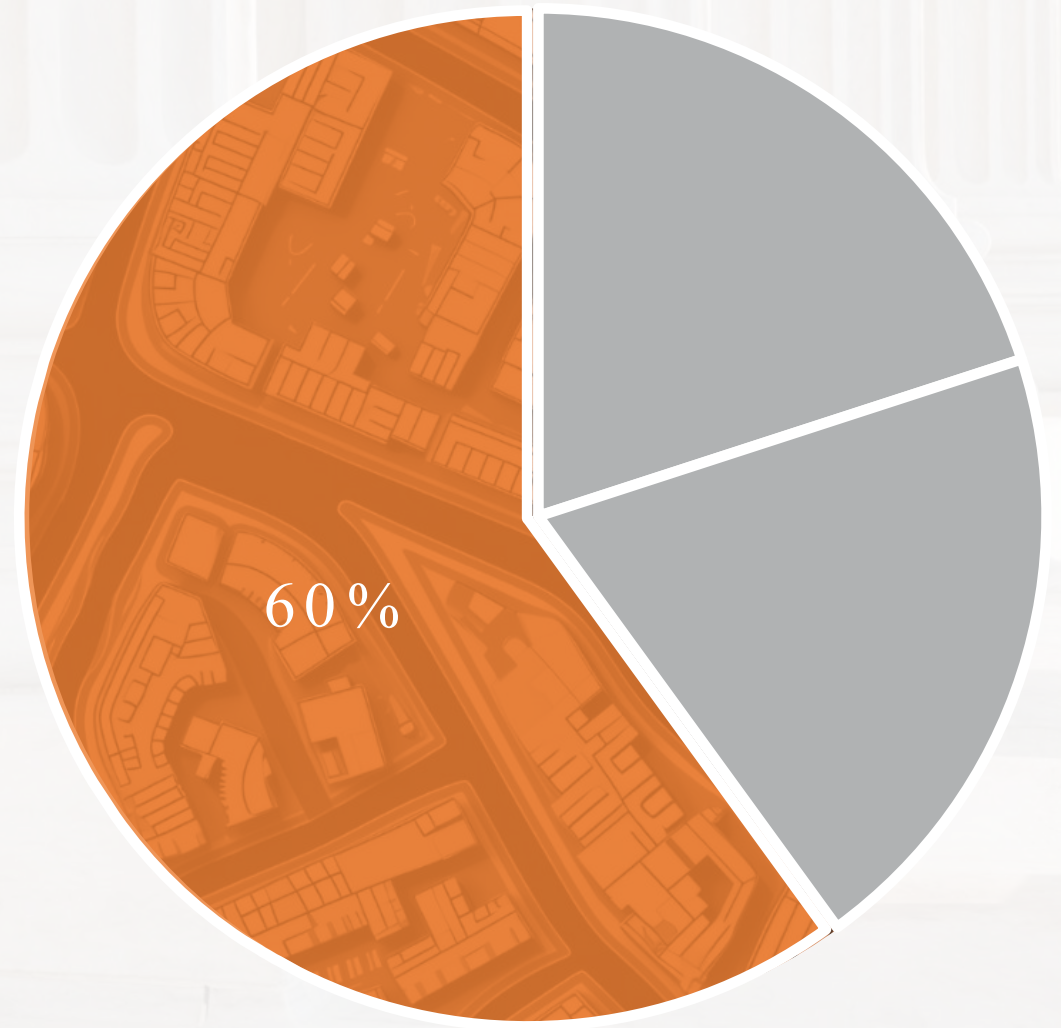
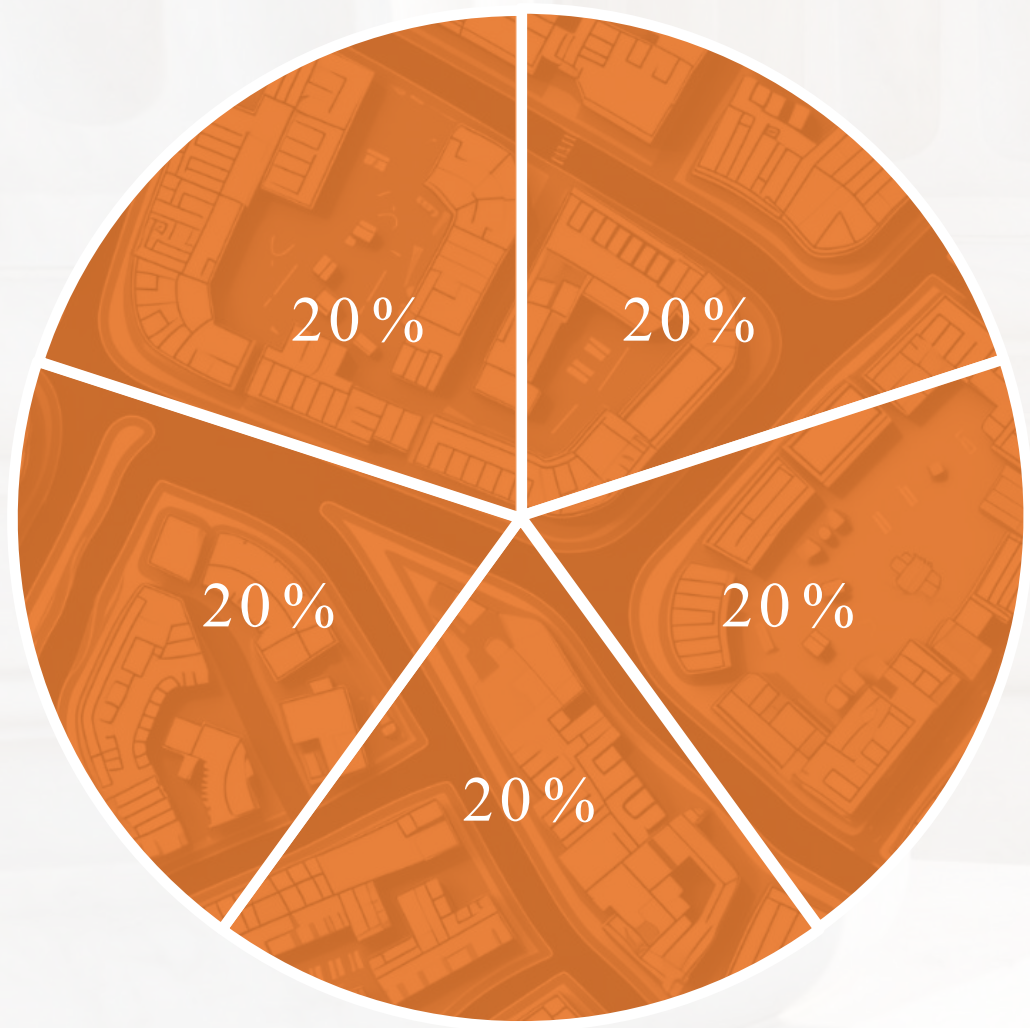
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Rule of Legally  
Required  
Participation?

Only results in three members of a five-member body participating or four members of a seven-member body participating







2

3

4

4

6



# Segmentation: necessary tool to accomplish competing goals

## ENSURING...

- ✔ That governmental decisions will not be made by public officials with financial interests in those decisions
- ✔ That elected officials can represent the public's interest in matters that do not affect their financial interests by minimizing the scope of required recusal from important and sometimes multi-faceted decisions



The background of the slide features a close-up, slightly blurred image of the American flag, showing the stars and stripes. Overlaid on this are several geometric shapes: a dark blue trapezoid at the top left, a brown trapezoid below it, and several orange and white diagonal stripes that create a sense of movement and depth.

# More benefits of segmentation

**Segmentation** serves to protect officials and cities from violations of conflict of interest laws and maximizes the potential that officials without financial interests in certain other aspects of the decision may participate in those other aspects



# How did this tool come about?

It is not mentioned or referred to in the Political Reform Act

It started through the issuance of a series of FPFC Advice Letters in the 1980s and 1990s



You and I basically asked the FPFC to make it up



Resulted in FPFC Regulation Section 18706

# Historical evolution of segmentation



1982

Splitting up a  
Zoning Decision  
Nord Advice Letter



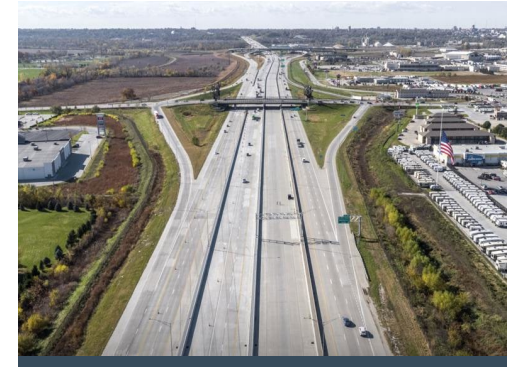
1985

Segmenting a  
County Budget  
Olson Advice Letter



1987

Segmenting a  
General Plan  
Huffaker  
Advice Letter



1989

Freeway Design  
Decisions  
Kilian Advice Letter



# The “Inextricably Interrelated” Test

1994 - whether five groups of decisions related to allowing an oil drilling project in a city could be segmented when a council member who lived near the site of the oil well project was disqualified from some of the decisions



Inextricably interrelated - if the result of one decision would effectively determine or nullify the results of another decision

ENNIS ADVICE LETTER

# The FPPC's Segmentation Regulation Section 18706

1

The decision in which the official has a financial interest can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;

2

The decision in which the official has a financial interest is segmented from the other decisions;

3

A final decision is reached on the first segment without the disqualified official's participation in any way; and

4

Once that first segment decision has been made, the disqualified public official's participation in the rest of the decisions does not result in a reopening of, or otherwise financially affect the public official's interests.



# FPPC's Segmentation Regulation Section 18706 (cont.)

5

Defines 'inextricably interrelated' as when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

6

Budget Decisions and General Plan Adoption or Amendment Decisions Affecting an Entire Jurisdiction: Once all the separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the public official may participate in the final vote to adopt or reject the agency's budget or to adopt, reject, or amend the general plan.

# How to use the segmentation process

500 foot or  
1,000 foot radius

For geographically  
defined segment

Who's up first - deciding which  
of multiple segments goes first

- ✓ Regulation is silent
- ✓ Galante and Detrick Advice Letters
- ✓ Random selection method for  
order of segments
- ✓ A second random selection method for who  
to participate in the first segment (if three or  
more segments are created for three or more  
conflicted officials)



# Process at the city council or commission meeting

- ✓ Multiple public hearings, multiple staff reports and separate agenda items are not required
- ✓ Staff report should explain process and define segments
- ✓ Recusals occur after public testimony but prior to deliberations on the segment or segments
- ✓ The final decision to approve a general plan update or a city-wide budget can be made at the end of the process by adopting one document
- ✓ For other decisions (zoning ordinance updates), multiple approval documents are required, which are adopted prior to moving to the balance of the decision



# Sample general plan segmentation process involving one recusal segment

Staff report and staff presentation summarizes segmentation and the segments that have been created around each official's financial interests that results in a conflict of interest

Public testimony on all components of the general plan

- A Member with conflict recuses before consideration of any portion begins
- B Other members act on the recusal segment
- C Conflicted member comes back after the decision has been made on the recusal segment and participates in rest of the decisions



# Sample general plan segmentation process involving multiple recusal segments

Staff report and staff presentation summarizes segmentation and the segments that have been created around each official's financial interests that results in a conflict of interest

Public testimony on all components of the general plan

- A Random selection of which segment to be considered first
- B If there are three or more segments, then there are not enough members to act on the first segment
- C Another random selection is made to pick one disqualified member to participate in the decisions on the first segment

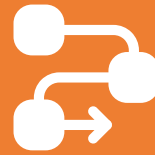
# General plan update segmentation Process (cont.)

- ✓ Three members make decisions on segment 1
- ✓ Member is disqualified from segment 1 is brought back and participates in decision on segment 2
- ✓ Members disqualified from segments 1 and 2 then participate in segment 3
- ✓ Member 3 is brought back and all members discuss and decide on the balance of the general plan

One motion at the end to adopt the one resolution approving the entirety of the General Plan



# Segmentation of a zoning ordinance update



Same process as for a general plan except separate ordinance is prepared for each segment



Each ordinance for each segment is adopted prior to proceeding to the next segment



Balance of content of ordinance is left to final ordinance after other segments and ordinances are adopted

# Types of decisions in which segmentation is possible

- ✔ Tax measures and reductions of certain taxes  
Bushnell Advice Letter
- ✔ Section 1090 conflict in a city budget  
Sarton Advice Letter
- ✔ Downtown specific plan amendments  
Smith and Stewart Advice Letters
- ✔ City trolley service decisions  
Pierik Advice Letter
- ✔ Affordable housing site inventory decisions  
Sodegren, Silver, Vanni and Barrow Advice Letters



# Types of decisions in which segmentation is not possible

✔ Decision in response to a referendum in which the official had a conflict in the adoption of the underlying ordinance  
Stricker Advice Letter

✔ Specific plan implementing decision that could allow changes from the plan's standards in which the official had a conflict of interest  
Moon Advice Letter

✔ A decision to place a measure on the ballot that is linked to site in which the official had a conflict of interest  
Stone Advice Letter

✔ Zoning decision more than 1,000 feet from official's property that rule out the possibility of the same use being located near the official's property  
Ball Advice Letter

# Recommendations

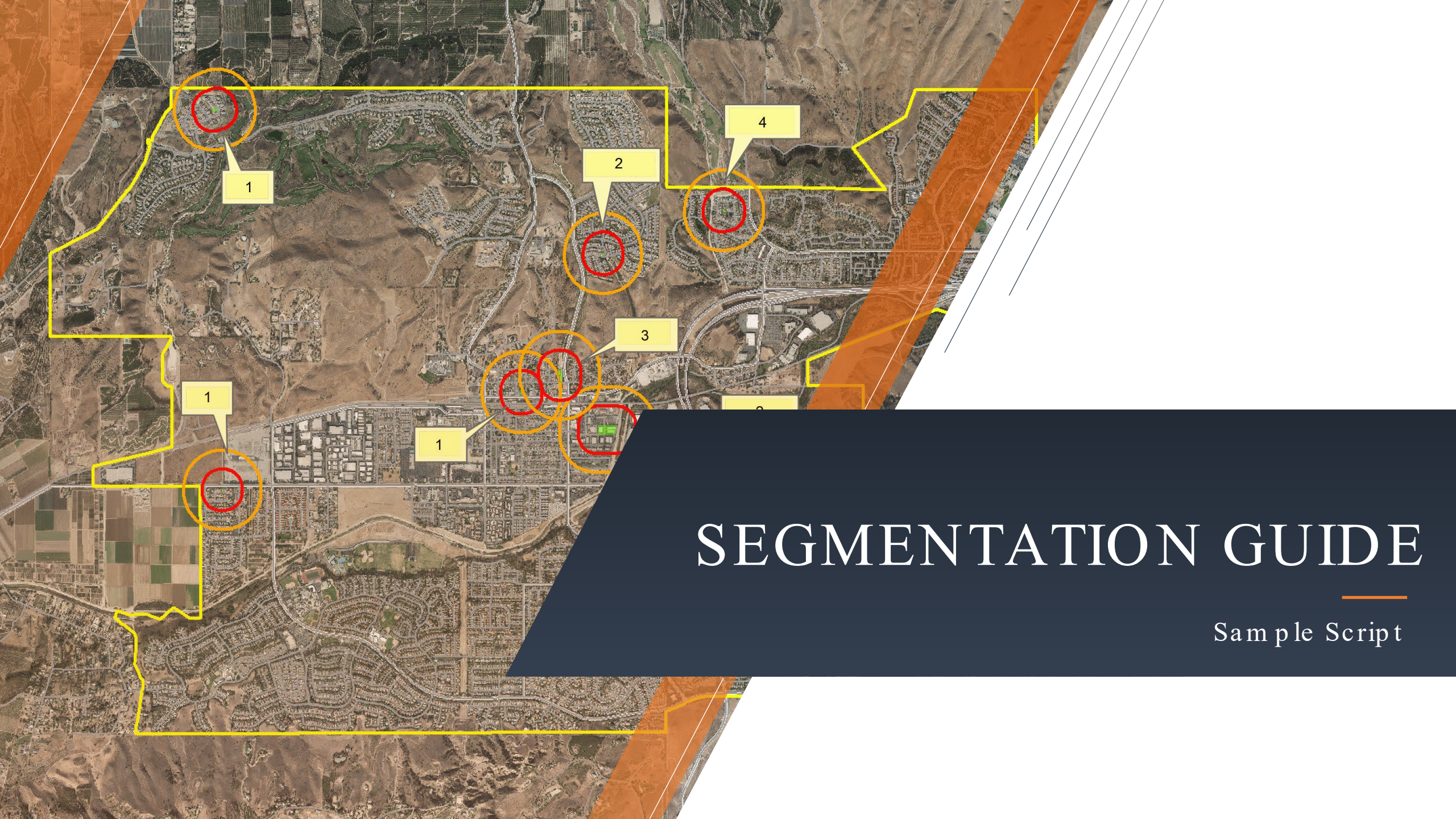
- ✓ Think ahead of upcoming major city decisions in sufficient time to consider segmentation
- ✓ Complete the conflict of interest analysis to see if the Public Generally Exception applies
- ✓ Determine if the decision can be segmented or if the segments are inextricably interrelated and cannot be segmented
- ✓ Craft the segments to not be under-inclusive or over-inclusive (1,000 foot radius areas)
- ✓ Explain the segmentation process to staff



# Recommendations (cont.)

- ✓ If there are multiple recusal segments, come up with a plan for the random selection of the order or segments and another random selection for the selection of a member or members to participate in the first segment if necessary to form a quorum on first segment
- ✓ Draft the inserts into the staff report, prepare a script for the mayor or chair and brief decision-makers and other staff to make sure they know how process works
- ✓ Draft the multiple approving documents for each segment if the decision is not a general plan or a city-wide budget decision
- ✓ Consider CEQA determination
- ✓ Time permitting seek FPPC validation of your process
- ✓ Implement the script at the meeting





# SEGMENTATION GUIDE

Sample Script



# Congratulations

You are now ready to  
boldly go into the world  
of segmentation

You now have another tool to  
protect and serve the interests  
of your city, its officials and  
its citizens

We can do this!



# Thank You!

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