



## Legislation Details (With Text)

<b>File #:</b>	22-219	<b>Status:</b>	Agenda Ready
<b>Type:</b>	Report	<b>In control:</b>	Town Council
<b>File created:</b>	5/11/2022	<b>Final action:</b>	
<b>On agenda:</b>	5/24/2022		
<b>Title:</b>	Initiate Opting Out of the Congestion Management Program		
<b>Sponsors:</b>	Public Works		
<b>Indexes:</b>			
<b>Code sections:</b>			
<b>Attachments:</b>	1. Staff Report, 2. Attachment 1 - CMP OPT OUT RESOLUTION ebl.pdf, 3. Attachment 2 - CMP Opt Out FAQ FINAL.pdf		

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

### FROM:

Scott Schneider, Assistant Public Works Director

### SUBJECT:

Initiate Opting Out of the Congestion Management Program

### RECOMMENDATION

Staff recommends that the Town Council adopt the attached Resolution to elect that the Town accept the Transportation Authority of Marin (TAM) recommendation to opt out of the Marin County Congestion Management Program (CMP) in Accordance with the State CMP statute as authorized by California Government Code Section 65088.3.

### BACKGROUND

As the Congestion Management Agency (CMA) for Marin County, TAM is required by State law to prepare and update on a biennial basis a Congestion Management Program (CMP) for Marin County. The CMP process was established as part of a 1990 legislative package to implement Proposition 111, which increased the state gas tax from 9 to 18 cents. The intent of the CMP was to tie the appropriation of new gas tax revenues to congestion reduction efforts by improving land use/transportation coordination. Proposition 111 was not tied to inflation and has largely been replaced with Senate Bill (SB) 1, which was passed in 2016, however funding from proposition 111 still flows to local jurisdictions in Marin County and throughout the state.

With the passage of Assembly Bill (AB) 32 (California Global Warming Solutions Act of 2006), SB 375 (Sustainable Communities and Climate Protection Act of 2008), and SB 743 (Environmental quality: transit-oriented infill projects, judicial review streamlining for environmental leadership development projects), the CMP is largely out of alignment with regional and state policy direction. Whereas the new legislation focuses on reducing emissions and vehicles miles traveled (VMT), the CMP legislation focused on Level of Service and congestion. In fact, with SB 743, the CMP now conflicts with current California Environmental Quality Act (CEQA) Transportation Analysis guidance.

At the April 28, 2022, TAM Board of Commissioners Meeting, the TAM Board directed TAM staff to initiate the Opt-Out

process and work with local jurisdictions to pass resolutions to Opt-Out of the CMP consistent with Government Code Section 65088.3. Gov. Code, § 65088.3 provides that a CMP is not required where a majority of local governments that collectively represent the majority of the population in the county, adopt local resolutions electing to opt out of the CMP.

## ANALYSIS

The CMP legislation has been updated many times since its passage. In 1997, the state allowed for local jurisdictions to opt out of the CMP process. California Government Code § 65088.3, states that counties may “opt-out” of the CMP requirement without loss of Proposition 111 gas tax revenues, if the majority of jurisdictions representing the majority of the county’s population pass resolutions that request TAM to “opt-out” of the CMP.

TAM is founded as a sales tax authority and is designated by local resolutions as the Congestion Management Agency for Marin County, responsible for developing the CMP. TAM inherited CMP activities from the Marin County Congestion Management Agency (a function of County Department of Public Works) in 2004. TAM has maintained the CMP in mostly its original form since its inception, expanding its traffic monitoring efforts, but limiting any substantive changes.

The CMP is intended to establish designated performance standards on our roadway network using a vehicle delay-based Level of Service (LOS) standard and comparing roadway conditions against those standards. Local land use developments are also reviewed to ensure performance standards are met. If performance standards on roadways are not met, local jurisdictions are required to perform corrective actions to mitigate LOS (typically though adding capacity). This deficiency planning process has never been conducted in the county but would be required of local jurisdictions, with failure to do so resulting in TAM being mandated to ask the State to withhold Proposition 111 funding. This process has the benefit of providing a uniform analysis for land use and transportation projects with resulting large traffic volumes. In practice, the CMP has never been used to withhold funding and serves primarily as a report on traffic conditions (on the subset of roads in the CMP network), rather than a functional planning process.

Due to its mandated process, the CMP is a rigid framework. TAM staff have raised concerns with the process including the inability to remove CMP segments once designated in the network, and removal of performance standards.

### Changes to Transportation Impact Analysis in CEQA

Prior to the effective date of SB 743 in 2020, the CMP was considered as part of the California Environmental Quality Act (CEQA) requirements, serving as a mutually supportive process for the CMP and lead agencies. Before SB 743, CEQA analysis of traffic impacts was measured by the project’s impact on road congestion and delay, or Level of Service. SB 743 changed this framework, and now a project is analyzed based on Vehicle Miles Traveled, rather than vehicle delay or traffic congestion. Because the CMP analyzes Level of Service (congestion, delay) this analysis does not add value and is not consistent with current CEQA requirements and local jurisdiction General Plan requirements. Moreover, this additional tier of CMP requirements can potentially conflict with VMT and General Plan analysis requirements. As housing element updates are required this year, staff have been coordinating discussions on traffic analysis from housing element updates. Planning directors have expressed support to remove CMP requirements which conflict with CEQA processes during this process.

### Marin Public Works Association Review

In November 2021, TAM staff presented information on next steps for the CMP to the Marin Public Works Association (MPWA) in November 2021 and asked if the CMP provided any value to local jurisdictions. MPWA members noted that they did not derive much value from the CMP process other than the traffic monitoring data, which they do find useful. They also asked TAM to consider development of a CMP 2.0 or next generation planning process. In response to these comments, MPWA formed a subcommittee of public works directors to take a closer look at the CMP process. This group met in February 2022 and TAM presented an overview of the CMP, its use, and three options for next steps, including

maintaining the CMP, continuing the CMP for an additional cycle, or initiating the Opt-Out Process.

The MPWA sub-committee recommended initiating the Opt-Out Process to MPWA at its March 2022 meeting. MPWA verbally agreed with this recommendation, although no formal action was taken.

#### CMP Opt-Out Process

As noted, at the April 28, 2022, TAM Board of Commissioners Meeting, the TAM Board directed TAM staff to initiate the Opt-Out process and work with local jurisdictions to pass resolutions to Opt-Out of the CMP.

To complete the Opt-Out process, a majority of local jurisdictions representing a majority of the population of the county would be required to pass resolutions to conduct the Opt-Out process. Marin County would not be the first county to opt out of the CMP. The following agencies have already conducted the Opt-Out Process or no longer prepare a CMP:

- Fresno Council of Governments (Fresno County) - 1997
- Los Angeles Metropolitan Transportation Authority - 2019
- Napa Valley Transportation Authority (Napa County) - (late 1990s/early 2000s)
- Sacramento Transportation Authority (Sacramento County) - 1996
- San Diego Association of Governments (San Diego County) - 2009
- San Joaquin Council of Governments - (2019-2020)
- San Luis Obispo Council of Governments (San Luis Obispo County) - 1997
- Santa Cruz County Regional Transportation Commission (Santa Cruz County) - 2000
- Sonoma County Transportation Authority (Sonoma County) - 2000

To date, local jurisdiction staff from both DPW and community development have indicated no concerns with proceeding with an Opt-Out process at this time. TAM staff are requesting consideration of council resolutions by December 2022.

Once city councils have completed the Opt-Out Process, TAM staff would return to the TAM Board for administrative updates, including updates to previous resolutions as appropriate.

## **FISCAL IMPACT**

There is no impact to the current fiscal year budget, nor any anticipated impact to future budgets or the continued flow of state gas tax revenues to local jurisdictions.

## **ENVIRONMENTAL IMPACT**

Adoption of the attached resolution completing the Opt-Out for the CMP is not a “project” under the California Environmental Quality Act, because it does not involve an activity which has the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Pub. Res. Code § 21065).