



TOWN OF FAIRFAX

STAFF REPORT

June 1, 2022

TO: Mayor and Town Council

FROM: Hamid Shamsapour, Interim Director of Public Works

SUBJECT: Adopt Resolution Electing to be Exempt from the Congestion Management Program

RECOMMENDATION

Staff recommends that the Town Council adopt the Resolution electing 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 State CMP statute as authorized by California Government Code Section 65088.3.

INTRODUCTION

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.

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 under PUC 18500 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 implementation of SB 743, 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. The implementation of SB 743 in July 2020, however, excluded vehicle delay from CEQA; therefore, the CMP requirements now result in additional analysis and review beyond current CEQA requirements and local jurisdiction general plan requirements. 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.

ATTACHMENTS

- A. Resolution
- B. CMP Opt-Out FAQ

RESOLUTION 22-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ELECTING TO BE EXEMPT
FROM THE CONGESTION MANAGEMENT PROGRAM**

WHEREAS, California voters passed Proposition 111 in June of 1990 requiring urbanized counties to develop and implement a Congestion Management Program (CMP); and

WHEREAS, the Legislature and Governor established the specific requirements of the Congestion Management Program by passage of legislation that was a companion to Proposition 111 and is codified in California Government Code Sections 65088 to 65089.10; and

WHEREAS, the Transportation Authority of Marin is the Congestion Management Agency responsible for Marin County's Congestion Management Program; and

WHEREAS, California Government Code Section 65088.3 allows urbanized counties to be exempt from the Congestion Management Program based on resolutions passed by local jurisdictions representing a majority of a county's jurisdictions with a majority of the county population; and

WHEREAS, over time the Congestion Management Program has become increasingly out of step with current regional, State, and Federal planning processes and requirements, including new State requirements for transportation performance measures related to greenhouse gas reduction; and

WHEREAS, on the 28th day of April 2022 the TAM Board of Commissioners directed TAM staff to work with the various local governments within the County in pursuing exemption from the Congestion Management Program under Government Code Section 65088.3.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Fairfax, California that:

SECTION 1. That the above recitations are true and correct.

SECTION 2. That the Town of Fairfax, California hereby elects to be exempt from the CMP as described in the California Government Code Section 65088.3.

The foregoing resolution was duly passed, approved, and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 1st day of June 2022 by the following vote:

AYES:
NOES:
ABSENT:

Stephanie Hellman, Mayor

Attest: _____
Michele Gardner, Town Clerk

Congestion Management Program (CMP) Frequently Asked Questions:

What is the CMP? The CMP is an early attempt at developing a performance-based planning process to determine local development impacts on a specified network of arterials and highways. The CMP identifies a roadway network, sets level of service performance standards, develops a standardized land use development review for regional traffic impacts, identifies transportation demand measures, requires the development of a travel model and a capital improvement plan to address any identified deficiencies to system performance.

Why does TAM prepare a CMP? TAM is founded as a sales tax authority and designated by local resolution as the congestion management agency (CMA). Section 65088 - 65089.10 of the state government code requires the development of a congestion management program every two years for local streets and roads funding from 1990's Proposition 111 to flow to local jurisdictions. TAM conducts CMA duties, specifically planning, programming and project delivery functions based on the CMA designation.

Why is TAM opting out? An "opt-out" provision was incorporated into the state government code in 1997, and some CMAs chose to opt out of the CMP subsequently. TAM's funding agreement with MTC has historically required TAM to develop either a congestion management program or a countywide transportation plan and allowed TAM to fund the CMP. In October 2021, TAM received guidance from MTC encouraging CMAs to opt out of the CMP process and stating MTC's intention to not allow future MTC planning agreement funds to be used for future CMP development.

Why is MTC encouraging CMAs to opt out? MTC is encouraging CMAs to opt out due to conflicts between level of service-based planning and the state legislative focus on greenhouse gas reduction from AB 32, SB 375, SB 743 and CEQA's use of Vehicle Miles Traveled as the preferred metric for transportation analysis. Additionally, MTC has noted that the CMP process does not include public participation, equity, climate change and other critical factors for consideration. The process also does not consider operations and maintenance costs, or adaptation needs such as sea level rise in its planning process.

What CMAs have opted out? TAM is not the first county to consider opting out. The following agencies have either opted out or no longer prepare a CMP:

- Fresno Council of Governments (Fresno County) – 1997
- Sacramento Transportation Authority (Sacramento County) – 1996
- San Diego Association of Governments (San Diego County) – 2009
- 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) – 2000s
- Napa Valley Transportation Authority (Napa County) – 2000s
- LA Metro (Los Angeles County) – 2019
- San Joaquin Council of Governments – 2020

Will opting out of the CMP affect Marin County’s Transportation Funding? There is no impact to Marin County transportation funding from opting out. MTC guidance supports this determination, and TAM sales tax expenditures have no relationship to the CMP. The impact on TAM member fees from local jurisdictions would remain in place. Retaining the CMP may require additional funding from local jurisdictions if MTC funds are no longer allowed for use.

Would opting out of the CMP affect Marin County Transportation Projects? There would be no impact to transportation projects if TAM retains or opts out of the CMP. MTC guidance and SCTA and NVTa practice assure that TAM can still input projects into the TIP.

Would opting out remove TAM’s CMA designation? The opt-out language refers specifically to the CMP, and not the broader CMA designation. TAM would maintain CMA functions outside of the CMP process, including but not limited to, designation of a representative to the SMART board, and distribution of Bay Area Air Quality Management District funds as designated.

What process is required to opt out of the CMP? The CMA designation is provided by local resolution. State code above allows for opting out of the CMP when “a majority of local governments, collectively comprised of the city councils and the county board of supervisors, which in total also represent a majority of the population in the county, each adopt resolutions electing to be exempt from the congestion management program.” (Section 65088.3)

Would opting out of the CMP require a Countywide Transportation Plan? To comply with MTC’s funding agreement, a countywide transportation plan would be required. TAM has the basis of a countywide plan with the development of 2017’s Strategic Vision Plan, as well as components of a countywide plan through other plans, programs and model development activities. Future updates to the Strategic Vision Plan are expected to meet Countywide Transportation Plan Requirements.

What is TAM’s process for a decision on opting out? TAM is currently exploring opting out with local jurisdictions, in advance of a future board discussion. If TAM needs to develop a 2023 CMP, staff will need to release an RFP around April 2022 to meet procurement and upcoming monitoring deadlines. TAM would like staff level agreement by the April timeframe, and local resolutions to be passed no later than December 30, 2022.

Does opting out of the CMP have any impact on how TAM and partner agencies address congestion? TAM will continue to monitor and report on traffic conditions and expects to be able to deliver more robust monitoring efforts for less expense than the legislatively required CMP performance analysis. TAM will continue to work with our partner agencies to deliver congestion and mobility improvements in Marin County as required by voters in approved expenditure plans. The CMP is not the only tool used to address congestion in the county, and sales tax measures and other planning efforts are more effective at delivering improvements in the county.

What is the relationship between the CMP and TAM's Measure Programs? The voter-approved Measure AA, the 0.5 cent transportation sales tax, and Measure B, the \$10 vehicle registration fee, would have no impact from opting out. Expenditure plans and strategic plans for these funds are not based on the CMP.