

From: Gideon Kracov
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To: 'webinar@opr.ca.gov'
Subject: 743 question

Does the last clause of proposed 15064.3(c) -- “previously adopted measures to mitigate congestion may continue to be enforced, or modified, at the discretion of the lead agency” mean that an agency has discretion to abandon existing LOS-based traffic mitigation or mitigation monitoring plans in already approved CEQA documents approved BEFORE the certification of the new guidelines? This would lead to great uncertainty about existing approvals.

To the contrary, it would seem that the new requirements should not invalidate existing traffic mitigation or mitigation monitoring plans in already approved CEQA documents approved BEFORE the certification of the new guidelines, even if the mitigation or mitigation monitoring plans are based on LOS methodology. Isn't that what the prospective rule of new section 15064.3d is attempting to say?

It would be helpful to clarify this, and to explain what the procedure is for agencies to re-open existing LOS-based traffic mitigation or mitigation monitoring plans in already approved CEQA documents. *See Katzeff* 181 Cal.App.4th 601 (2010) (re-open the prior approvals or mitigation monitoring plans and make new findings).

Thank you.

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