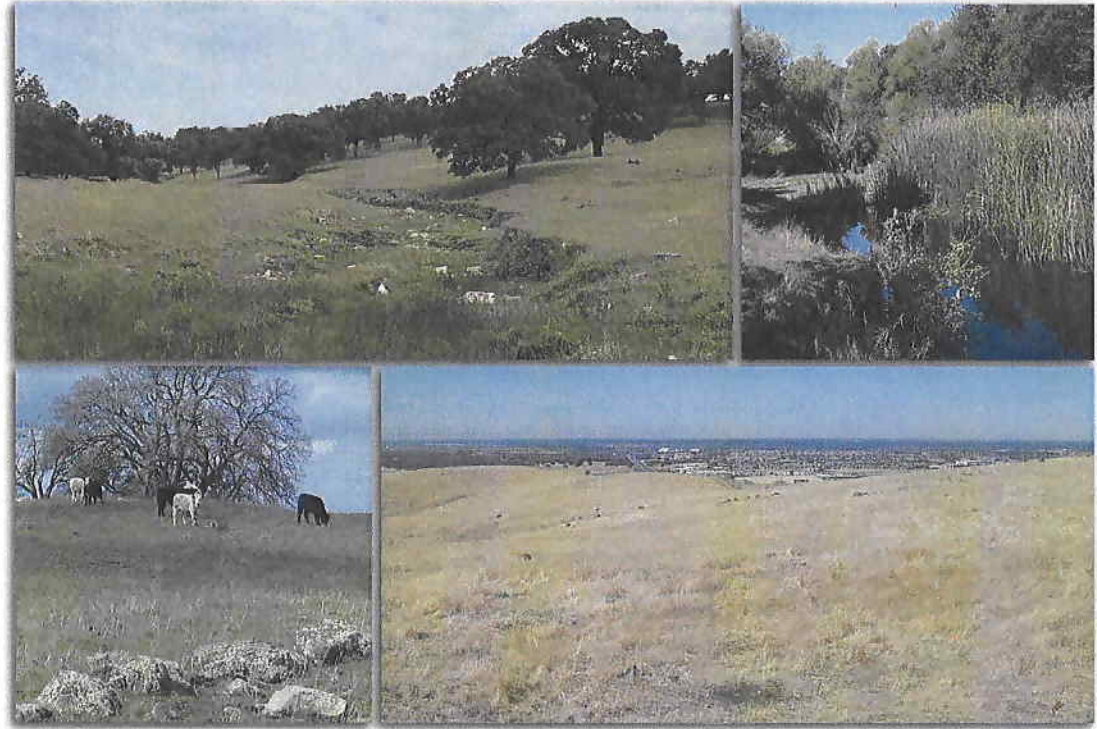


Additional Responses to Comments on the Draft Environmental Impact
Report and the Final Environmental Impact Report
Folsom South of U.S. Highway 50 Specific Plan Project

SCH #2008092051

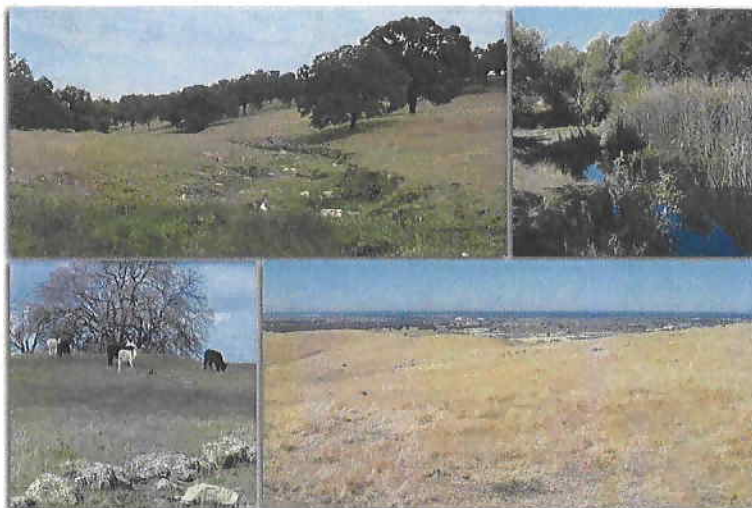


CITY OF
FOLSOM
DISTINCTIVE BY NATURE

Prepared by:
AECOM and RMC Water and Environment



Additional Responses to Comments on the Draft Environmental Impact Report
and the Final Environmental Impact Report
Folsom South of U.S. Highway 50 Specific Plan Project



Prepared for:
City of Folsom
50 Natoma Street
Folsom, CA 95630
Attn: David Miller
(916) 355-7222

June 2011

"Land" Analysis Prepared by:
AECOM
2020 L Street, Suite 400
Sacramento CA 95811
Contact:
Francine Dunn/Principal/(916) 414-5800



"Water" Analysis Prepared by:
RMC Water and Environment
1451 River Park Drive, Suite 142
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Contact:
Steve Brown/Principal/(916) 564-2236



1 INTRODUCTION

This “Additional Responses to Comments on the DEIR and FEIR” has been prepared to respond to comments received on the Draft Environmental Impact Report (DEIR) for the Folsom South of U.S. Highway 50 (U.S. 50) Specific Plan Project after the close of the public comment period (i.e., letter from Teichert Aggregates, Inc. dated September 20, 2010 but received on May 16, 2011), and to comments received after publication of the Final Environmental Impact Report (FEIR). This document has been prepared by the City of Folsom (City) as the CEQA lead agency.

On June 28, 2010, the City and USACE released the DEIR/DEIS for public review and comment. The comment period closed on September 10, 2010, after being extended by the City. The DEIR/DEIS evaluated the potential environmental effects of the Proposed Project (Proposed Project Alternative) and five land use alternatives, along with the Proposed Off-Site Water Facility Alternative and 10 water conveyance alternatives. A public workshop was held at Folsom City Hall on August 2, 2010, and a public hearing to receive public input on the DEIR/DEIS was held at Folsom City Hall on August 4, 2010. The public hearing was recorded and transcripts were made of public comments received both at the workshop and at the hearing. Written comments were received from Federal, state, regional, and local agencies, as well as from organizations and individuals; comments were also received during the public hearing. The City and USACE considered and responded to all comments received on the DEIR/DEIS.

The EIR/EIS consists of the DEIR/DEIS (Volumes I, II, and III and appendices thereto); the comments, responses to comments, and revisions to the DEIR/DEIS contained in the FEIR/FEIS (Volume I and appendices thereto); and the Additional Responses to Comments on the DEIR and FEIR (Volume I).

Pursuant to State CEQA Guidelines Section 15088, “The Lead Agency shall respond to comments received during the noticed comment period...” In this case, the noticed comment period ended on September 10, 2010. Pursuant to Public Resources Code (PRC) Section 21092.5(c), the lead agency is not required to respond to comments that are not received within the specified comment periods. Therefore, the City is not legally obligated to respond to any of the comments contained herein, which were received after the close of the comment period. Nonetheless, in the interests of transparency and comprehensively addressing comments received on the DEIR and FEIR, the City is voluntarily responding to the comments.

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2 LIST OF COMMENTERS AND INDIVIDUAL RESPONSES

2.1 LIST OF COMMENTERS

Table 2-1 provides a list of the organizations and persons who (1) submitted comments that the City did not receive during the public comment period on the Draft Environmental Impact Report (DEIR), and (2) submitted comments after the Final Environmental Impact Report (FEIR) was circulated, to which the City of Folsom (City) is responding in this *Additional Responses to Comments on the DEIR and FEIR*.

Table 2-1 List of Commenters		
Organizations / Individuals	Letter Date	Letter ID
Teichert Aggregates, Inc. (James B. Wiley of Taylor & Wiley)	May 16, 2011	Teichert-3
Teichert Aggregates, Inc. (John M. Taylor of Taylor & Wiley)	September 10, 2010 (received May 16, 2011)	Teichert-4
Angelo G. Tsakopoulos (Scott N. Castro of Jeffer, Mangels, Butler & Marmaro LLP)	May 17, 2011	Tsakopoulos-3
County of Sacramento, Municipal Services Agency Michael Penrose, Director, Department of Transportation	May 18, 2011	Sac Cnty-3
Legal Services of Northern California, on behalf of the Sacramento Housing Alliance Mona Tawatao, Regional Counsel	May 18, 2011	LSNC

2.2 INDIVIDUAL RESPONSES

Each letter and each comment within a letter have been given an identification number. Responses are numbered so that they correspond to the appropriate comment. Where appropriate, responses are cross-referenced between letters or with a prior individual response or master response that was provided in the FEIR/Final Environmental Impact Statement (FEIS) (circulated on May 6, 2011). Each comment contained in the comment letter is summarized in *italics* at the beginning of each comment response.

TAYLOR & WILEY

A PROFESSIONAL CORPORATION

ATTORNEYS

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JOHN M. TAYLOR
JAMES B. WILEY
JESSE J. YANG
KATE A. WHEATLEY
MATTHEW S. KEASLING
JAMES E. MIZELL, III

May 16, 2011

OF COUNSEL
KATHLEEN R. MAKEL

VIA OVERNIGHT DELIVERY AND E-MAIL

Ms. Gail Furness de Pardo
City of Folsom Community Development Department
50 Natoma Street
Folsom, California 95630

Re: Final EIR/EIS for Folsom South of U.S. 50 Specific Plan Project (SCH #
2008092051)

Dear Ms. Furness de Pardo:

Taylor & Wiley represents Teichert, Inc. ("Teichert") with respect to its Teichert Quarry project, which is located approximately one mile south of the proposed Folsom South of U.S. 50 Specific Plan Project ("Project"). We previously submitted three comment letters on the City's Draft EIR/EIS for the Project: 1

- 1) letter dated July 15, 2010, requesting an extension of the comment period;
- 2) letter dated September 10, 2010, addressed to the U.S. Army Corps of Engineers ("Corps") regarding the National Environmental Policy Act ("NEPA"); and 2
- 3) letter dated September 10, 2010, addressed to the City regarding the California Environmental Quality Act ("CEQA").

In reviewing the Final EIR/EIS for the Project, it has come to our attention that the City only responded to the first two letters and did not respond to our attached comment letter dated September 10, 2010, regarding CEQA. 3

Please feel free to call if you have any questions or need further information regarding our comments.

Very truly yours,



James B. Wiley

Enclosure

cc: Michael Smith, Teichert Aggregates

**Letter
Teichert-3
Response**

**Teichert Aggregates Inc.
(James B. Wiley of Taylor & Wiley)
May 16, 2011**

Teichert-3-1 *The comment states that Taylor & Wiley represents Teichert, Inc. with respect to its quarry project located south of the Folsom South of U.S. 50 Specific Plan Area (SPA). The comment states that Taylor & Wiley previously submitted three comment letters on the DEIR/Draft Environmental Impact Statement (DEIS), and that the first letter dated July 15, 2010 requested an extension of the comment period.*

The City received and responded to the letter from Taylor & Wiley dated July 15, 2010. See responses to comments Teichert-1-1 through Teichert-1-3 in the FEIR/FEIS.

Teichert-3-2 *The comment states that Taylor & Wiley submitted a comment letter dated September 10, 2010 addressed to the U.S. Army Corps of Engineers (USACE) regarding the National Environmental Policy Act (NEPA).*

The USACE received and responded to the letter from Taylor & Wiley dated September 10, 2010. See responses to comments Teichert-2-1 through Teichert-2-232 in the FEIR/FEIS.

Teichert-3-3 *The comment states that Taylor & Wiley submitted a comment letter dated September 10, 2010 addressed to the City regarding the California Environmental Quality Act (CEQA). The comment states that the City did not respond to the September 10, 2010 letter, and indicates that a copy of that letter is attached to this May 16, 2011 letter.*

The City has conducted a diligent search of its files, and has located no record of receiving the referenced letter from Taylor & Wiley addressed to the City on the Folsom South of U.S. Specific Plan project on September 10, 2010 or at any time during the public comment period on the DEIR/DEIS. The comment letter related to CEQA was provided to the City for the first time on May 16, 2011, approximately 8 months after the end of the comment period on the DEIR/DEIS. Pursuant to State CEQA Guidelines California Code of Regulations (CCR) Section 15088, "The Lead Agency shall respond to comments received during the noticed comment period..." In this case, the noticed comment period ended on September 10, 2010. Pursuant to Public Resources Code (PRC) Section 21092.5(c), the lead agency is not required to respond to comments that are not received within the specified comment periods. Therefore, the City is not obligated to respond to the Taylor & Wiley letter dated September 10, 2010. Nonetheless, in the interests of transparency and comprehensively addressing comments received on the DEIR and FEIR, the City is voluntarily responding to the comments contained in the September 20, 2010 letter. See comment letter Teichert-4 below and the responses thereto.

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OF COUNSEL
KATHLEEN R. MAKEL

September 10, 2010

HAND DELIVERED

Ms. Gail Furness de Pardo
City of Folsom Community Development Department
50 Natoma Street
Folsom, California 95630

Re: Draft EIR/EIS for Folsom South of U.S. 50 Specific Plan Project (SCH #
2008092051)

Dear Ms. Furness de Pardo:

Taylor & Wiley represents Teichert, Inc. ("Teichert") with respect to its Teichert Quarry project, which is located approximately one mile south of the proposed Folsom South of U.S. 50 Specific Plan Project. The City of Folsom ("City") is well aware of the Teichert Quarry project, having submitted several comment letters regarding the environmental impact report (EIR) that the County of Sacramento prepared for the that project. Copies of those comment letters are attached for your reference. The purpose of this letter is to provide comments on the City's Draft EIR (DEIR) for the Folsom South of U.S. 50 Specific Plan Project ("Project"). Interestingly enough, several of our comments are the same or similar to those contentions made by the City with respect to the EIR for the Teichert Quarry project. 1

General Comments

Adequacy of Impact Analysis. The CEQA Guidelines provide: "An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences."¹ In some cases, such as an EIR for a general plan, it is permissible to provide more of a "program-level" analysis and defer more detailed analysis to future project-specific environmental reviews that would be prepared for subsequent individual projects implementing the plan.² However, in the case of specific plans such as the Project, future residential projects that are consistent with an adopted specific plan are exempt from CEQA.³ For this reason, a specific plan EIR must provide as much detail as reasonably feasible,⁴ because the environmental consequences of future 2

¹ CEQA Guidelines § 15151.

² See CEQA Guidelines § 15152, subd. (a).

³ Cal. Government Code § 65457.

⁴ CEQA Guidelines § 15151.

residential development consistent with that specific plan will not be subject to additional CEQA review. In several instances, as discussed in detail below, the DEIR fails to adequately analyze the environmental impacts of the Project to the extent “reasonably feasible” as CEQA requires. In other cases, such as the modeling of noise and air quality impacts, the DEIR uses improper methodology, which results in an inaccurate characterization of potential impacts. These deficiencies result in an EIR that fails to adequately inform decision makers of the environmental consequences of the Project as required by CEQA.⁵

2 cont.

3

Deferral of Mitigation Formulation. As discussed in further detail below, the DEIR contains many mitigation measures requiring that additional studies or mitigation plans be submitted after approval of the Specific Plan as part of subsequent phases of the Project. It is improper to defer the formulation of important mitigation measures until after project approval.⁶ Moreover, mitigation measures must be feasible under CEQA.⁷ The DEIR’s deferral of mitigation specifics deprives citizens and decision-makers of an opportunity to evaluate the feasibility and effectiveness of such measures.

4

Segmentation. A “project” under CEQA is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”⁸ Thus, an EIR should consider the “whole of a project” and not its individual components when evaluating the significance of environmental effects. In this case, the DEIR considers both the land use and water supply components of the Project, but it splits its analysis of Project impacts into separate impacts for “Land” and “Water” components of the Project. As discussed in further detail below, this approach clearly segments the analysis of the Project into two parts that may individually have less than significant impacts but, when considered together, may have potentially significant impacts that are not disclosed in the DEIR.

5

Recirculation. Recirculation of a draft EIR is required when “significant new information” must be added to it prior to certification.⁹ “Significant new information” requiring recirculation may include: 1) a new significant impact that would result from the project or from a new mitigation measure proposed to be implemented; 2) a substantial increase in the severity of a previously identified significant effect; 3) a feasible alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the environmental effects of the project but the project proponents decline to adopt it; or 4) a draft EIR that is so fundamentally and basically inadequate and conclusory in nature as to preclude meaningful public review.¹⁰ In this case, the DEIR is deficient in a number of respects, as outlined in detail below. The

6

⁵ *Id.*

⁶ See *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1397; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.

⁷ CEQA Guidelines § 15126.4.

⁸ CEQA Guidelines § 15378, subd. (a).

⁹ CEQA Guidelines § 15088.5, subd. (a).

¹⁰ *Id.*

extensive modifications that will be necessary to correct such deficiencies constitute “new significant information” warranting recirculation of the DEIR.

6 cont.

Executive Summary

Pages ES-39 to ES-40, Mitigation Measure 3A.3-2a. As mitigation for the impact of the Land components of the project on federally-listed vernal pool invertebrates, the DEIR requires the future preparation of a detailed monitoring plan and development of reporting requirements. The DEIR’s failure to include a monitoring plan and reporting requirements constitutes an impermissible deferral of mitigation formulation. Without this information, there is no substantial evidence in support of the DEIR’s conclusion that impacts to vernal pool invertebrates would be reduced to a less-than-significant level after mitigation.

7

Page ES-107, Impact 3A.9-5. The Executive Summary table incorrectly lists Impact 3A.9-5 as “potential effects on groundwater recharge.” Impact 3A.9-5 is discussed on page 3A.9-45 of the DEIR as “potential exposure to 200-year (0.005 AEP) flood prior to implementation of SB 5.”

8

Chapter 1. Introduction and Statement of Purpose and Need

Pages 1-17 and 18, Section 1.9, Documents Incorporated by Reference. The DEIR incorporates by reference a number of previously prepared environmental documents, including the Freeport Regional Water Project EIR/EIS, the Zone 40 Water Supply Master Plan EIR, and the Sacramento County General Plan General Plan Update Draft EIR. However, incorporation by reference is not appropriate for some of these documents. For example, the DEIR purports to rely on the analysis contained within the Freeport Regional Water Project EIR for portions of the Water component of the project, including the diversion of water from the Sacramento River and transport of that water up to the Vineyard Surface Water Treatment Plan (SWTP), as described on pages 1-17, 2-82 and 83 of the DEIR. Such a use conflicts with the CEQA Guidelines, which provide that incorporation by reference “is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.”¹¹ As the DEIR is relying on the Freeport Regional Water Project EIR for part of its analysis of the Project’s impacts and not merely for background purposes, incorporation by reference of this document is not appropriate, and the analysis contained within that document needs to be included within the body of the DEIR.

9

Chapter 2. Alternatives

General Comment. An EIR is required to consider a range of reasonable alternatives that feasibly attain most of the basic objectives of the project but avoid or

10

¹¹ CEQA Guidelines § 15150, subd. (f).

