CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

CENTRAL REGION 1234 EAST SHAW AVENUE FRESNO, CALIFORNIA, 93710 RECEIVED

MAR 0 6 2019

HABITAT CONSERVATION PLANNING BRANCH



AMENDMENT NO. 7
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2013-025-04
California High-Speed Train Project Merced to Fresno Section Permitting Phase 1

INTRODUCTION

On March 12, 2014, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2013-025-04 (ITP) to the California High Speed Rail Authority (Permittee) authorizing take of California tiger salamander (Ambystoma californiense), Swainson's hawk (Buteo swainsoni), and San Joaquin kit fox (Vulpus macrotis mutica) (collectively, the Covered Species) associated with and incidental to the Permitting Phase 1 of the Merced to Fresno Section of the High-Speed Train (HST) Project (Project). The Project as described in the ITP originally issued by CDFW includes HST alignment beginning at the intersection of Avenue 17 and the Burlington Northern Santa Fe (BNSF) Railway, in the City of Madera, Madera County, California, and continuing south to an area on the southern side of State Route (SR) 41, adjacent to Los Angeles Street in the City of Fresno, Fresno County, California. The total length of the Project is 24.1 miles. The Project is the first of the nine California HST sections to be constructed; each section will function independently, but once joined together will create a statewide HST system. The HST will be an electrically powered, high-speed train with steel-wheel-on-steel-rail technology and state-of-the art safety, signaling, and automated train-control systems. The trains will be capable of operating at speeds of up to 220 miles per hour (mph) over a fully grade separated, dedicated track alignment. The Project will be built using a design/build (D/B) approach, a method of construction by which one D/B contractor works under a single contract with the Permittee to provide design and construction services. The Project as originally permitted in the ITP includes construction and installation of all Project components, including disturbance of up to 1,049.00 acres (hereafter, Construction Footprint). Construction may occur at any point along the Construction Footprint, and construction may occur at multiple locations simultaneously. The Project also includes operations, maintenance, and inspection activities within the Construction Footprint (O&M), and Mitigation Site activities.

In a letter dated July 23, 2014, the Permittee requested revisions to several ITP Conditions of Approval, specifically those that mentioned Designated Biologists, so that individuals with less species-specific training ("General Biological Monitors") could be used to perform less technical monitoring tasks. The Permittee also requested the

Rev. 2013.1.1

deletion of Condition of Approval 8.48 (O&M Tree and Wood Shrub Removal), and minor modifications to several other measures, primarily for clarification purposes. In a follow up email on August 13, 2014, the Permittee also requested that a single Condition of Approval be modified (Condition of Approval 6.2) related to the Designated Biologist to help expedite processing of an Amendment. CDFW issued Minor Amendment No. 1 on August 21, 2014 incorporating these changes.

In an email dated April 24, 2015, the Permittee requested a revision of the ITP's Project Description for the Fresno River crossing, to modify the design in this area from a viaduct design to one with a partial retained fill segment, and add two new staging areas. In addition, the Permittee asked to include the previously requested Designated Biologist changes not addressed in Minor Amendment No. 1. The Permittee also requested that Wildlife Crossing #5 be moved slightly to a new location (approximately 50 feet from the authorized location), and that changes to the land use and vegetation communities be updated, and the applicable land cover designation be substituted. Lastly, in addition to the increased mitigation that was required to offset the requested Construction Footprint increase, CDFW also required additional mitigation to address a non-compliance event that occurred on June 2014; 7.2 acres of fallow land and 2 acres of grassland habitat that were disturbed by the Permittee's contractor outside of the footprint permitted by the ITP. CDFW issued Major Amendment No. 2 on June 12, 2015 incorporating these changes.

In a set of emails dated September 25, 2015, May 2, 2015, and May 23, 2016, the Permittee requested a revision to the ITP to increase the size of the Construction Footprint by 770.87 acres to a total of 1,874.26 acres. The increase of the Construction Footprint accommodates: (1) four new road crossings; (2) additional impact areas for repaying of asphalt at the ends of planned overpasses; (3) utility relocations; (4) construction access; (5) road improvements and right-of-way (ROW) acquisitions; (6) a temporary 20-foot construction easement, north of the San Joaquin River, to install barrier fence around the HST ROW; and (7) a 2.7-mile extension of the northern boundary of the Construction Footprint. The Permittee also requested: (1) the removal of overcrossing and road improvements; (2) additional road alignments and locations; (3) modification of the design and/or placement of bridges and ROW crossings; and (4) the addition of a paralleling station, radio tower, and two new permanent access roads to be located in Madera County, California. Because of the increase in the Construction Footprint, the amendment request also included an increase in the amount of compensatory mitigation (Habitat Management (HM) lands and associated endowment), an increase in the Performance Security amount required to proceed with Covered Activities, and a request to extend the required timeframe to protect and transfer all HM lands and record any required conservation easements. Lastly, the State

Major Amendment No. 7
Incidental Take Permit 2081-2013-025-04
CALIFORNIA HIGH -SPEED RAIL AUTHORITY
CALIFORNIA HIGH-SPEED TRAIN PROJECT
Merced to Fresno Section Permitting Phase 1

endangered hairy Orcutt grass (*Orcuttia pilosa*) was added to the list of Covered Species subject to take authorization. CDFW issued Major Amendment No. 3 on September 20, 2016 incorporating these changes.

In an email dated October 24, 2016, the Permittee requested an amendment to the ITP to extend the dry season work window beyond October 31st to November 15th for ground-disturbing activities at the Lazy K Ranch Mitigation Site. In addition, the Permittee requested that exclusion fencing for California tiger salamander be allowed for use during ground disturbance at the Lazy K Ranch, under the provision that the fencing would be removed when the proposed extended dry season work window expires. CDFW issued Minor Amendment No. 4 on October 31, 2016 incorporating these changes.

In an email dated April 5, 2017, the Permittee requested an amendment of the ITP to increase the size of the Construction Footprint by 155.72 acres to a total of 2,039.18 acres. This increase in the Construction Footprint is necessary to accommodate the full extent of the footprint for the north extension of the Project. The north extension includes 2.89 miles of guideway, construction of an at-grade bridge over Schmidt Creek, a wildlife crossing north of Road 27, and a four-lane overcrossing at Road 26. Additional design refinements in the request include structural design changes to the Avenue 17 overcrossing, which includes replacing a planned retaining wall with an engineered embankment, an additional 0.35 acres of land at El Paso Road. 0.008 additional acres at Ridgedale Drive to accommodate final design of the road, and the inclusion of approximately 14.97 acres of the BNSF transportation corridor between Avenue 17 and Avenue 19 to be used for geotechnical investigation, utility relocation and potential access improvements between the BNSF and HST corridors. In addition to the major construction elements and design refinements listed above, Covered Activities that will occur within the increased Construction Footprint include the construction and improvement of private and public access ways, structure demolitions, utility relocation and protection, and fencing. CDFW issued Major Amendment No. 5 on June 23, 2017 incorporating these changes.

In a letter dated September 19, 2017, the Permittee requested an amendment of the ITP to include an alternative option to fulfill their mitigation obligation that increased as a result of the increased Construction Footprint as issued in Major Amendment No. 5. To address this request the ITP was revised to: (1) provided an option to purchase 6.9 acres (6.43 acres of currently released vernal pool fairy shrimp credits that are also designated as "future release" California tiger salamander aquatic breeding habitat credits and 0.47 acres of currently released California tiger salamander upland habitat that has been identified to hold water with sufficient duration to support breeding) of

Covered Species credits from CDFW-approved Dutchman Creek Conservation Bank; (2) provided a modified timeframe in which the remaining mitigation obligation must be met; and (3) revised the Performance Security amount required in order to proceed with Covered Activities. CDFW issued Major Amendment No. 6 on August 3, 2018 incorporating these changes.

In issuing the ITP, Minor Amendment No. 1, Major Amendment No. 2, Major Amendment No. 3, Minor Amendment No. 4, Major Amendment No. 5, and Major Amendment No. 6 (collectively, the ITP, as amended), CDFW found, among other things, that Permittee's compliance with the Conditions of Approval would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

In a letter dated September 24, 2018, the Permittee requested further revision to the ITP, as amended, to revise the Project Description to allow for an increase in the Construction Footprint. The Construction Footprint increase accommodates new Work Areas for improvements to Dry Creek Canal and the use of the roads adjacent to Dry Creek Canal for construction access. The new Work Areas will result in an increase of 1.53 acres of permanent impacts.

In a letter dated December 3, 2018, the Permittee requested amending the ITP, as amended, to accommodate construction of an intrusion protection barrier (IPB) within specific limits of the HST alignment in Fresno County to mitigate the risk of any potential derailed trains from the adjacent private rail lines from entering the path of the HST. The IPB will be a concrete wall and will not require additional Project Construction Footprint area beyond what was already permitted. IPB construction will occur in three locations totaling 4,060 linear feet, within downtown Fresno, along the "Fresno Trench."

This Major Amendment No. 7 (Amendment) makes the following changes to the ITP, as amended:

First, this Amendment increases the size of the entire Project Construction Footprint by 1.53 acres to a total of 2,040.71 acres of cumulative impact disturbance. This increase in the Construction Footprint is necessary to accommodate the minor grading of Dry Creek Canal, expansion of the existing concrete linear, installation of new rip-rap and geotextile fabric at the edge of the expanded concrete liner in the canal, and the use of the roads adjacent to the canal for construction access.

Second, this Amendment adds constructing 4,060 linear feet of IPB as a Covered Activity.

Third, this Amendment increases the Covered Species impacts for Swainson's hawk and San Joaquin kit fox by 0.64 acres as a result of an increase in the Construction Footprint.

Fourth, this Amendment modifies the language in Condition of Approval 7.4 (Tracking Suitable Habitat Feature Disturbances, Map Updating, and Reporting) to remove the list of specific dates that the Permittee provided metadata to update the Baseline Maps in Exhibit 5 of the ITP, as amended.

Fifth, this Amendment requires either the purchase of additional Covered Species credits or the permanent protection of additional HM lands and accompanying management costs to compensate for Covered Species impacts associated with the increase in the Construction Footprint.

Sixth, this Amendment requires the proof of purchase for the purchase of additional Covered Species credits be provided to CDFW within 18 months of issuance of this Amendment.

Seventh, this Amendment increases the Performance Security amount required in order for the Permittee to proceed with Covered Activities.

Eighth, this amendment requires the Performance Security be provided to CDFW within no more than 30 days after the effective date of this Amendment and within no more than 30 days after the effective date of any subsequent amendment(s), prior to commencement of vegetation- or ground-disturbing activities or any other Covered Activities, whichever comes first.

Ninth, this amendment revises the Map Book to include the new Work Areas and revises the depiction of the impact areas in the Map Book from habitat type to permanent and temporary impacts.

AMENDMENT

The ITP, as amended, is further amended as follows (amended language in **bold italics**; deleted language in strikethrough):

1. The third paragraph of the section entitled "Project Description" on pages 2 and 3 of the ITP, as amended, shall be further amended to read as follows:

The Project is 27.01 miles in length and includes construction and installation of all Project components (Exhibit 1). Construction and installation of all Project components will disturb up to 2,039.18 2,040.71 acres (hereafter, Construction Footprint). Construction may occur at any point along the Construction Footprint, and construction may occur at multiple locations simultaneously. For purposes of this ITP, in addition to Construction Footprint activities (i.e., construction of the California HST), the Project also includes operations, maintenance, and inspection activities within the Construction Footprint (O&M); and Mitigation Site activities. The three types of general activities are described more fully in this Project Description. Also, each of the three general types of activities requires their own Conditions of Approval.

2. The following description of the IPB is added on page 11 between the paragraphs titled "Superstructure" and "Fencing:"

Intrusion Protection Barrier: Intrusion protection barrier (IPB) will be used to mitigate the risk of potential derailment when there is less than a 102-foot separation between the project alignment/guideway and conventional railroads. Where High-Speed Rail elevated guideway structures are within 102 feet of an adjacent railroad, guideway support columns, piers, abutments and wing walls will be designed to withstand potential train collision and intrusion protection will not be used. Where overhead grade separation support columns, piers, abutments and wing walls are within 25 feet of an adjacent railroad, pier protection designs will meet BNSF and UPRR Guidelines for Grade Separations and the American Railway Engineering and Maintenance-of-Way Association (AREMA) requirements for Pier Protection. IPB will be located a minimum of 5 feet from the project right-of-way or property line. Typical IPB will consist of a Reinforced Concrete Barrier Wall (RCBW).

RCBW height will be measured from the finished grade at the railroad side of the right-of-way, or 7.5 feet from the railroad top of rail, provided that the top of rail is 2.5 feet or less from the ground below the ballast; or will have a minimum height of 10 feet. Minimum RCBW thickness will be 3 feet. RCBW will be supported on cast-in drilled hole foundation piles, which will be approximately 4 feet in diameter, placed 9 to 10 feet apart on center, and 10 to 25 feet in depth. Openings along RCBW for maintenance, inspection and utility crossings will vary in width between 3 and 25 feet. Where RCBW interacts with roadway overcrossings, reinforced overcrossing supports will be used.

IPB will be constructed in three locations:

- North of West Belmont to West Belmont Avenue/Fresno County (1,880 linear feet)
- West Belmont Avenue to UPRR Spur Line/Fresno County (890 linear feet)
- UPRR Spur Line to Dry Creek Canal/Fresno County (1,290 linear feet)
- 3. The first paragraph of the section entitled "Impacts of the Taking on Covered Species" on pages 32 and 33 of the ITP, as amended, shall be further amended to read as follows:

This ITP covers all Project related activities that cumulatively disturb no more than 2.039.18 2.040.71 acres within the Construction Footprint and 529.79 acres within the Lazy K Ranch Mitigation Site (the Construction Footprint and Lazy K Ranch Mitigation Site are collectively, the Project Area). Project activities include subsurface geotechnical drilling and boring; habitat grubbing, vegetation removal, clearing, and mass grading followed by the mobilization of equipment and materials; earthwork including construction of temporary and permanent excavation support structures; excavation of open cut slope and fill, at grade profile excavation and leveling, and retained fill cut, rail bed foundation soil compaction, and elevated profiles and elevated profile structure components including construction and installation of straddle bents, foundations, pile caps, substructures, and superstructures; trench digging and other subsurface utility installation, relocation, and protection; pad preparation and construction of a batch plant, materials storage, fabrication, casting areas, access roads, and staging areas; rotary drilled reinforced concrete cast in place pile and drive pile installation; excavation of drainage swales and fabrication and installation of underground drainage culverts and pipes: 23 roadway modifications including realignment and resurfacing, construction of new access roads, overcrossing, and undercrossing; construction of waterway crossing structures over the Fresno River, Cottonwood Creek, and the San Joaquin River including partial dewatering and diversion of water: construction and assembly of tie and ballast and slab track railway systems. and shoofly track; erecting mast poles; construction of electrical systems facilities including the OCS, TPSS, two switching stations, and six paralleling stations; construction of signal huts and bungalows including installation of cabling to the field hardware and track stations; traction electrification; excavation and construction of wildlife crossings, construction of the Downtown Fresno Station: installation of AD and AR fence; construction of temporary job site trailers and field offices including the development of building pads and preparation of parking

Major Amendment No. 7 Incidental Take Permit 2081-2013-025-04 CALIFORNIA HIGH –SPEED RAIL AUTHORITY CALIFORNIA HIGH-SPEED TRAIN PROJECT Merced to Fresno Section Permitting Phase 1

areas; application of dust suppressants; operation and maintenance activities such as track, power, structure, signaling, train control, communications, intruder, and right-of way inspection and repair; and equipment staging, inoculum collection, land grading, and excavation of wetlands in the Wetland Restoration Area and mowing, hand tool or auger planting of trees and shrubs, and installation of irrigation systems in the Riparian Restoration Area within the Lazy K Ranch Mitigation Site and other activities within the Construction Footprint and Mitigation Site described in the Project Description section of this ITP (Covered Activities).

4. The first paragraph of the section entitled "Swainson's Hawk" on page 34 of the ITP, as amended, shall be further amended to read as follows:

Up to 392.42 393.06 acres of foraging habitat and one nest tree for Swainson's hawk (SWHA) could be permanently impacted as a result of Covered Activities (Table 5) and it is expected that all potentially suitable habitat would be permanently destroyed. Based on the results of baseline surveys conducted within the Construction Footprint in spring 2013, there is one known location of a SWHA nest tree within 0.5-mile of the Construction Footprint, on the west side of SR 99 south of the San Joaquin River. The foraging habitat impact acres were determined based on this one nest tree and the guidelines set forth in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California (California Department of Fish and Game, 1994).

5. The first paragraph of the section entitled "San Joaquin Kit Fox" on page 35 of the ITP, as amended, shall be further amended to read as follows:

Up to 438.26 438.90 total acres, of habitat for San Joaquin kit fox (SJKF) could be permanently impacted as a result of Covered Activities (Table 5). This determination was based on an identification of baseline vegetation cover types and that all potentially suitable habitat would be permanently destroyed within the Construction Footprint. Vegetation cover type acres that could function as SJKF foraging, denning, and breeding habitat were quantified and subsequently used as a habitat-based surrogate to estimate the extent of incidental take in the form of mortality and indirect impacts that will occur as a result of Project build out.

6. Table 5 on page 36 of the ITP, as amended, shall be further amended to read as follows:

Table 5. Covered Species Habitat Impacts

Covered Species	Habitat Type	Impact Type	Impact Acres
California tiger salamander	Upland refugia (California annual grassland, pasture, barren, fallow field, inactive agriculture, and ruderal)	Permanent	150.53
	Aquatic breeding (vernal pool, open water, seasonal wetland)	Permanent (Direct)	6.47
		Permanent (Indirect)	6.07
Swainson's hawk	Foraging (California annual grassland, pasture, barren, fallow field, inactive agriculture, ruderal, field crops, row, crops, and irrigated hay crops)	Permanent	392.42 393.06
	Nesting (riparian and eucalyptus woodland)	Permanent	1 nesting tree(s)
San Joaquin kit fox	Upland (California annual grassland, pasture, barren, fallow field, inactive agriculture, ruderal, field crops, row crops, and irrigated hay crops)	Permanent	438.26 438.90
Hairy Orcutt grass	vernal pool, seasonal wetland	Permanent (Direct)	0.94
		Permanent (Indirect)	3.35

7. Condition of Approval 7.4 (Tracking Suitable Habitat Feature Disturbances, Map Updating, and Reporting) on pages 42 and 43 of the ITP, as amended, shall be further amended to read as follows:

Permittee shall maintain Geographic Information System (GIS) shapefile layers and associated maps depicting: 1) mapped areas of all land disturbances within the Construction Footprint; and 2) mapped areas of disturbed identified habitat features suitable for Covered Species (see Condition of Approval 7.4.1 for habitat

Major Amendment No. 7
Incidental Take Permit 2081-2013-025-04
CALIFORNIA HIGH –SPEED RAIL AUTHORITY
CALIFORNIA HIGH-SPEED TRAIN PROJECT
Merced to Fresno Section Permitting Phase 1

features) within the Construction Footprint (as depicted in the Baseline Map Book. Exhibit 5, Baseline Maps 1 through 55, Exhibit 9 and generated from the metadata provided by the Permittee in March 2013, August 2016, and April 2017). Permittee shall maintain the GIS layers and metadata for those maps and shall update the GIS layers and maps if there are any new detections of Covered Species or their habitat feature. Within each Work Area of the Construction Footprint, Permittee shall track, in real time, acreages of identified habitat features suitable for Covered Species disturbed by Covered Activities. This tracking shall be maintained using a GIS format and include photo documentation of the habitat feature within a Work Area conducted no more than 14 days prior to initiation of Covered Activities. The photo documentation of each habitat feature shall include a minimum of four photos: one taken each from the North, South, East, and West and facing the habitat feature. There shall be separate photo documentation of each habitat feature suitable for Covered Species within a Work Area. Accordingly, if there are multiple habitat features in a Work Area, there will be multiple sets of photo documentation for that Work Area. The Permittee shall document the total disturbed acreage of habitat features for each Covered Species compiled from the real time tracking, and compare the documented disturbance in each Work Area to the Baseline Maps. Permittee shall provide GIS layers and the associated metadata to CDFW with the Monthly Compliance Report (see Condition of Approval 7.7). Permittee shall also maintain maps for each Covered Species separately, and shall include updates to any of the maps in the next successive Annual Status Report (see Condition of Approval 7.8). Permittee shall also provide up-to-date GIS layers of the identified habitat features suitable for Covered Species with the Monthly Compliance Report and a summation of disturbance of identified habitat features annually at the time of Annual Status Report submission. See related Conditions of Approval 8.33.2, 8.33.3, 8.34.2, 8.34.3 concerning mapping of the Wetland Restoration Area and Riparian Restoration Area.

8. Condition of Approval 9 (Habitat Management Land Acquisition) on page 71 of the ITP, as amended, shall be further amended to read as follows:

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement for all Covered Species other than hairy Orcutt grass, the Permittee shall purchase 6.9 acres (6.43 acres of currently released vernal pool fairy shrimp credits that are also designated as "future release" CTS aquatic breeding habitat and 0.47 acres of currently released CTS upland habitat that has been identified to hold water with sufficient duration to support breeding) of Covered Species credits from the CDFW approved Dutchman Creek Mitigation Bank (Condition of Approval 9.2). The Permittee shall also either purchase an additional 0.64 acre of Covered Species credit for SWHA foraging habitat and 0.64 acre of Covered Species credit for SJKF upland habitat from a CDFW-approved mitigation or conservation bank with a service area that encompasses the Project Area OR shall provide for the permanent protection and management of an additional 0.64 acre of SWHA foraging habitat and 0.64 acre of SJKF upland Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. AND The **Permittee** shall **also** provide for the permanent protection and management of 392.42 acres of Habitat Management (HM) lands within the Preservation Area at Lazy K Ranch pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Furthermore, prior to commencement of vegetation- or ground-disturbing activities or any other Covered Activities, Permittee shall permanently preserve and fund the perpetual management of an additional 10.39 acres of California tiger salamander breeding Habitat Management lands.

The proof of purchase of the 6.9 acres of CTS aquatic breeding habitat credits must be provided to CDFW within 30 days of issuance of this Amendment pursuant to Condition of Approval 9.2 below. The proof of purchase of the 0.64 acre of Covered Species credits for additional SWHA foraging habitat and SJKF upland habitat must be provided to CDFW within 18 months of issuance of this Amendment. Permanent protection and funding for perpetual management of compensatory habitat described in the preceding paragraph must be complete by December 31, 2019. Permittee shall obtain CDFW written approval of any acquisition and perpetual protection and management of the Habitat Management lands in accordance with Conditions of Approval 9.3 and 9.4 below. If Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations, it shall be provided to CDFW prior to commencement of vegetation- or ground-disturbing activities or any other Covered Activities.

Further, prior to commencement of <u>any</u> Covered Activities in all areas of suitable habitat for HaOrGr, Permittee shall (1) permanently preserve and fund the

perpetual management of 17.16 acres of Habitat Management lands demonstrated through protocol level botanical surveys to be occupied habitat for HaOrGr; and (2) shall permanently preserve and fund the perpetual management of 8.58 acres of enhancement and translocation habitat as identified in the Enhancement Plan and in accordance with Condition of Approval 8.58.2.1 above. Permittee shall obtain CDFW written approval of any acquisition and perpetual protection and management of the Habitat Management and enhancement and translocation lands in accordance with Conditions of Approval 9.3 and 9.4 below.

- 9. Condition of Approval 9.1 (Cost Estimates) on pages 72 and 73 of the ITP, as amended, shall be further amended to read as follows:
 - 9.1. <u>Cost Estimates.</u> CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands for all Covered Species other than hairy Orcutt grass as follows:
 - 9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$5,025.93/acre for 392.42 acres, and \$20,135.06/acre for the additional 10.39 acres of CTS aquatic breeding habitat, \$3,216.60 for the additional 0.64 acre of SHWA foraging habitat, and \$3,216.60 for the additional 0.64 acre of SJKF upland habitat for: \$1,970,164.56 for 392.42 acres of HM lands, and \$209,203.27 for 10.39 acres of additional CTS aquatic breeding habitat, and \$6,433.20 for 0.64 acre of additional SWHA foraging habitat and 0.64 acre of additional SJKF upland habitat. Land acquisition costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
 - 9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at \$563,381.06 for 392.42 acres of HM lands, and \$14,932.47 for 10.39 acres of additional CTS aquatic breeding habitat, and \$1,837.64 for 0.64 acre of additional SWHA foraging habitat and 0.64 acre of additional SJKF upland habitat;
 - 9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$80,284.12 for 392.42 acres of HM lands, and \$2,125.66 for 10.39 acres of additional CTS aquatic breeding habitat, and \$261.88 for 0.64 acre of additional SWHA foraging habitat and 0.64 acre of additional SJKF upland habitat;

- 9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$5,806.00/acre for 392.42 acres and for 10.39 acres of additional CTS aquatic breeding habitat and \$3,715.84/0.64 acre for 0.64 acre of additional SWHA foraging habitat and 0.64 acre of additional SJKF upland habitat: \$2,275,952.00, and \$60,324.34, \$3,715.84 and \$3,715.84, respectively. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at \$12,000.00.
- 10. Condition of Approval 9.2 (Covered Species Credits) on page 73 of the ITP, as amended, shall be further amended to read as follows:

Covered Species Credits. Permittee shall purchase 6.9 acres (6.43 acres of currently released vernal pool fairy shrimp credits that are also designated as "future release" CTS aquatic breeding habitat and 0.47 acres of currently released CTS upland habitat that has been identified to hold water with sufficient duration to support breeding) of Covered Species credits, other than hairy Orcutt grass, from the CDFW-approved Dutchman Creek Conservation Bank within 30 days of issuance of the Amendment. Permittee shall also purchase an additional 0.64 acre of SWHA foraging habitat and 0.64 acre of SJKF upland habitat of Covered Species credits from a CDFW-approved mitigation or conservation bank, with a service area that encompasses the Project Area, within 18 months of issuance of this Amendment if HM lands for the additional 0.64 acre of SWHA foraging habitat and 0.64 acre of SJKF upland habitat are not provided pursuant to Condition of Approval 9 above.

11. Condition of Approval 10.1 (Performance Security) on page 77 of the ITP, as amended, shall be further amended to read as follows:

Security Amount. The Security shall be in the amount of: \$4,901,781.74 for 392.42 acres of HM lands; and \$298,585.74 for 10.39 acres of additional CTS aquatic breeding habitat; and \$39,964.40 for 0.64 acre of additional SWHA foraging habitat and 0.64 acre of additional SJKF upland habitat. This These

Major Amendment No. 7
Incidental Take Permit 2081-2013-025-04
CALIFORNIA HIGH -SPEED RAIL AUTHORITY
CALIFORNIA HIGH-SPEED TRAIN PROJECT
Merced to Fresno Section Permitting Phase 1

amounts is are based on the cost estimates identified in Condition of Approval 9.1 above and is are Security only for Covered Species other than hairy Orcutt grass.

- 12. Condition of Approval 10.3 (Performance Security) on page 77 of the ITP, as amended, shall be further amended to read as follows:
- 13. <u>Security Timeline</u>. The Security shall be provided to CDFW within 30 days after the effective date of this Amendment and within 30 days after the effective date of any subsequent amendment(s), prior to commencement of vegetation- or ground-disturbing activities or any other Covered Activities, whichever comes first.
- 14. Exhibit 5 (Baseline Map Book) in the list of Attachments on Page 80 of the ITP, as amended, shall be further amended to include the replacement of the entire Map Book with Attachment 1. Attachment 1 revises the current Map Book to include the new Work Areas for Dry Creek Canal and revises the depiction of impact areas from habitat type to permanent and temporary impacts within the entire Construction Footprint.

The corresponding measures in the Mitigation Monitoring and Reporting Plan (MMRP) (Attachment 1 of the ITP, as amended) shall be further amended to read the same as above. All terms and conditions of the ITP, as amended, and the MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing the avoidance, minimization, and mitigation measures contained in the ITP, as amended, and in this Amendment, this Amendment will not increase Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

<u>Discussion</u>: This Amendment makes nine specific changes to the ITP, as amended. First, this Amendment increases the size of the entire Project Construction Footprint by 1.53 acres to a total of 2,040.71 acres of cumulative impact disturbance. This increase in the Construction Footprint is necessary to accommodate the minor grading of Dry Creek Canal, expansion of the existing concrete linear, installation of new rip-rap and geotextile fabric at the edge of the expanded concrete liner in the canal, and the use of the roads adjacent to the canal for construction access.

Second, this Amendment adds constructing 4,060 linear feet of IPB as a Covered Activity.

Third, this Amendment increases the Covered Species impacts for Swainson's hawk and San Joaquin kit fox by 0.64 acres as a result of an increase in the Construction Footprint.

Fourth, this Amendment modifies the language in Condition of Approval 7.4 (Tracking Suitable Habitat Feature Disturbances, Map Updating, and Reporting) to remove the list of specific dates the Permittee provided metadata to update the Baseline Maps in Exhibit 5 of the ITP, as amended.

Fifth, this Amendment requires either the purchase of additional Covered Species credits or the permanent protection of additional HM lands and accompanying management costs to compensate for Covered Species impacts associated with the increase in the Construction Footprint.

Sixth, this amendment requires the proof of purchase for the purchase of additional Covered Species credits be provided to CDFW within 18 months of issuance of this Amendment.

Seventh, this Amendment increases the Performance Security amount required in order for the Permittee to proceed with Covered Activities.

Eighth, this amendment requires the Performance Security be provided to CDFW within no more than 30 days after the effective date of this Amendment and within no more than 30 days after the effective date of any subsequent amendment(s), prior to commencement of vegetation- or ground-disturbing activities or any other Covered Activities, whichever comes first.

Ninth, this amendment revises the Map Book to include the new Work Areas and revises the depiction of the impact areas in the Map Book from habitat type to permanent and temporary impacts.

CDFW has determined that although the Amendment may result in an increase in take of the Covered Species, any additional impacts of the taking that would arise will be minimized and fully mitigated through implementation of the Conditions of Approval. Accordingly, there will be no increase in Project impacts to the Covered Species with this Amendment.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP, as amended meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

<u>Discussion</u>: CDFW determined in March 2014 that the Project as approved, met the standards for issuance of an ITP under CESA. CDFW determined in August 2014, in June 2015, in September 2016, in October 2016, in June 2017, and in August 2018, that Minor Amendment No. 1, Major Amendments No. 2 and No. 3, Minor Amendment No. 4, and Major Amendments No. 5 and No. 6, respectively, to the ITP met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP, as amended: (1) will increase the habitat compensation in proportion to the increase in impact due to the increase in habitat impact so that the fully mitigate standard is still met, (2) does not alter the Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the Conditions of Approval in the ITP, as amended, and MMRP which will minimize and fully mitigate impacts of the taking on the Covered Species.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Discussion: CDFW issued the original ITP in March 2014, Minor Amendment No. 1 to the ITP in August 2014, Major Amendment No. 2 in June 2015, Major Amendment No. 3 in September 2016, Minor Amendment No. 4 in October 2016, Major Amendment No. 5 in June 2017, and Major Amendment No. 6 in August 2018 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the California High-Speed Train: Merced to Fresno Section Final Project Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH No. 2009091125) certified by the lead agency, California High-Speed Rail Authority, on May 3, 2012; Addendum 2013-1 to the Final Merced to Fresno Project Section EIR/EIS (October 2013); and Addendum 2013-2 to the Final Merced to Fresno Section Project EIR/EIS (November 2013). As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change to the ITP, as amended. However, for the reasons explained above, CDFW concludes that approval of this Amendment will not result in and does not have the potential to create any new significant or substantially more severe environmental

effects than previously analyzed and disclosed by California High Speed Rail Authority during its lead agency review of the Project, particularly with respect to the impacts authorized by CDFW pursuant to the ITP, as amended. As a result, CDFW finds that no subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment increases the size of the Construction Footprint by 1.53 acres to accommodate the minor grading of Dry Creek Canal, expansion of the existing concrete liner, installation of new rip-rap and geotextile fabric at the edge of the expanded concrete liner in the canal, and the use of the roads adjacent to the canal for construction access. This Amendment adds constructing 4,060 linear feet of IPB as a Covered Activity. This Amendment also increases the Covered Species impacts for Swainson's hawk and San Joaquin kit fox by 0.64 acres as a result of an increase in the Construction Footprint. This Amendment modifies the language in Condition of Approval 7.4 (Tracking Suitable Habitat Feature Disturbances, Map Updating, and Reporting) to remove the list of specific dates the Permittee provided metadata to update the Baseline Maps in Exhibit 5 of the ITP, as amended. This Amendment requires either the purchase of additional Covered Species credits or the permanent protection of additional HM lands and accompanying management costs to compensate for Covered Species impacts associated with the increase in the Construction Footprint. This amendment also requires the proof of purchase for the purchase of additional Covered Species credits be provided to CDFW within 18 months of issuance of this Amendment. This Amendment also increases the Performance Security amount required in order for the Permittee to proceed with Covered Activities and requires the Performance Security be provided to CDFW no more than 30 days after the effective date of this Amendment and no more than 30 days after the effective date of any subsequent amendment(s). Lastly, this amendment also revises the Map Book to include the new Work Areas and revises the depiction of the impact areas in the Map Book from habitat type to permanent and temporary impacts. As described above, these changes to the ITP, as amended, will increase the Project impacts on Covered Species previously analyzed and authorized by the ITP, as amended, affect Permittees' substantive mitigation obligations under the ITP, as amended, and will increase temporal impacts on the Covered Species. Therefore, this Amendment will substantially increase the scope or nature of the permitted Project or activity, or significantly modify the minimization, mitigation, or monitoring measures in the ITP, as amended. CDFW has determined that the changes to the ITP, as amended constitutes a Major

Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

California Department of Fish and Wildlife Habitat Conservation Planning Branch Attention: CESA Permitting Program Post Office Box 944209 Sacramento, California 94244-2090

Attachment:

ATTACHMENT 1

EXHIBIT 5 Baseline Map Book

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 2/25/19

Julie A. Vance Regional Manager Central Region

ACKNOWLEDGMENT

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Pernittee, (2) acknowledges receipt of the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

Date: _

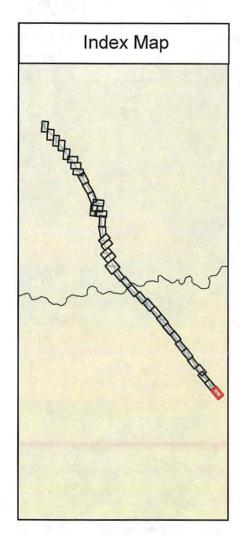
ch 1,2019

Printed Name

Mark A. Welovyklin

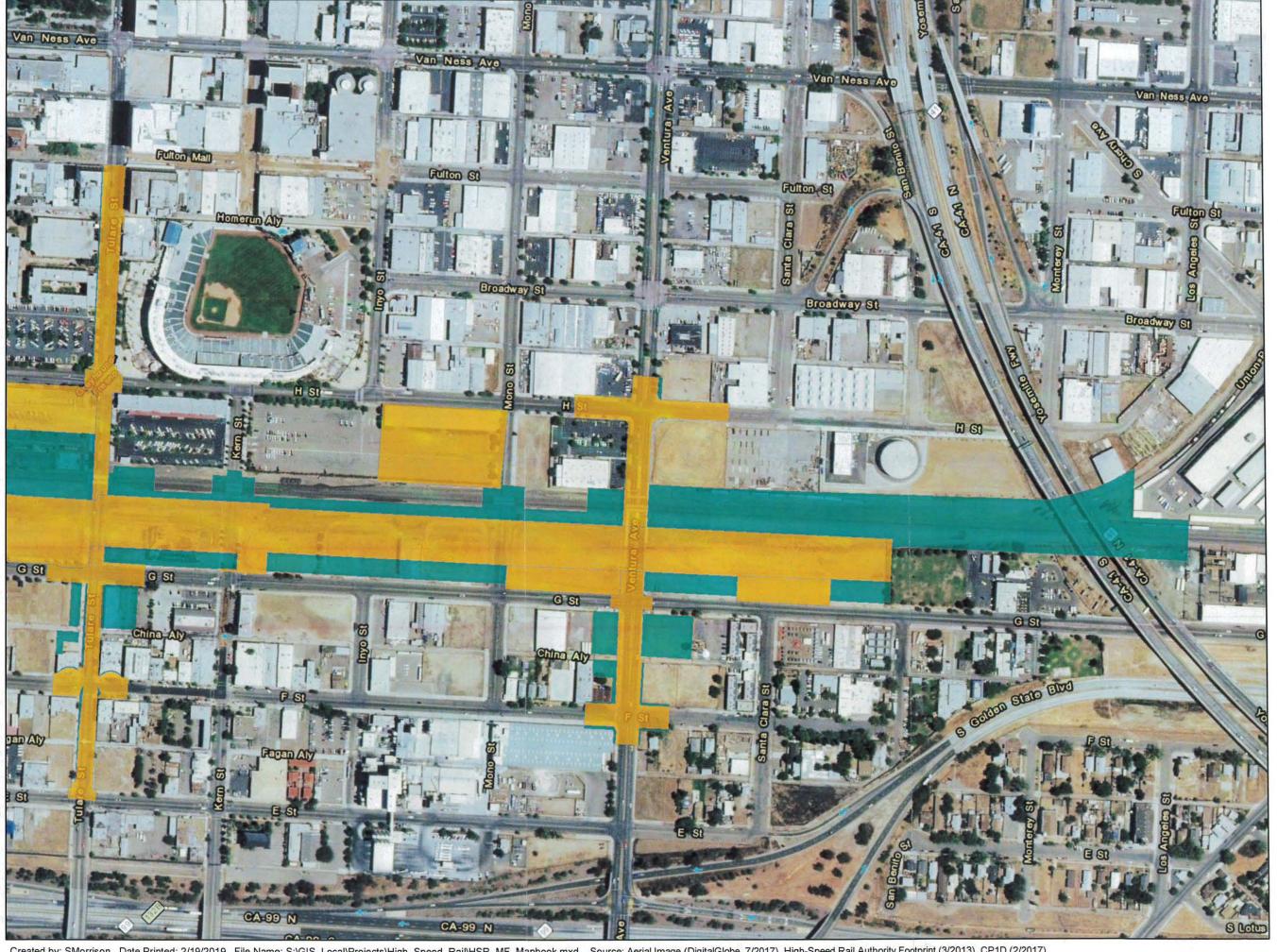
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ATTACHMENT 1 Exhibit 5. Baseline Map Book

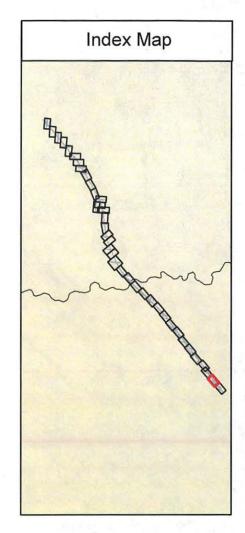




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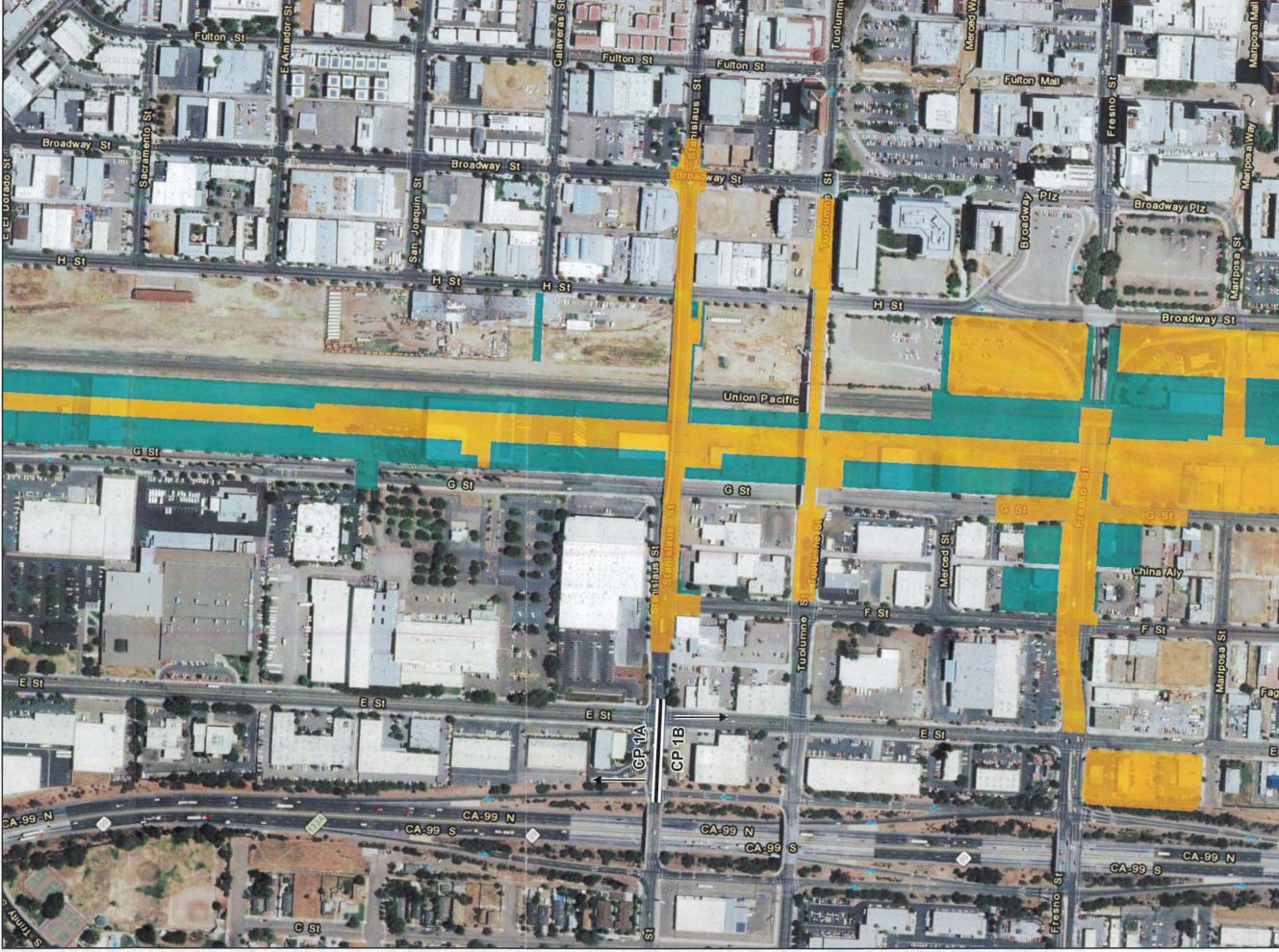


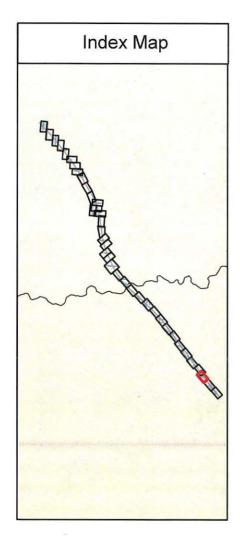
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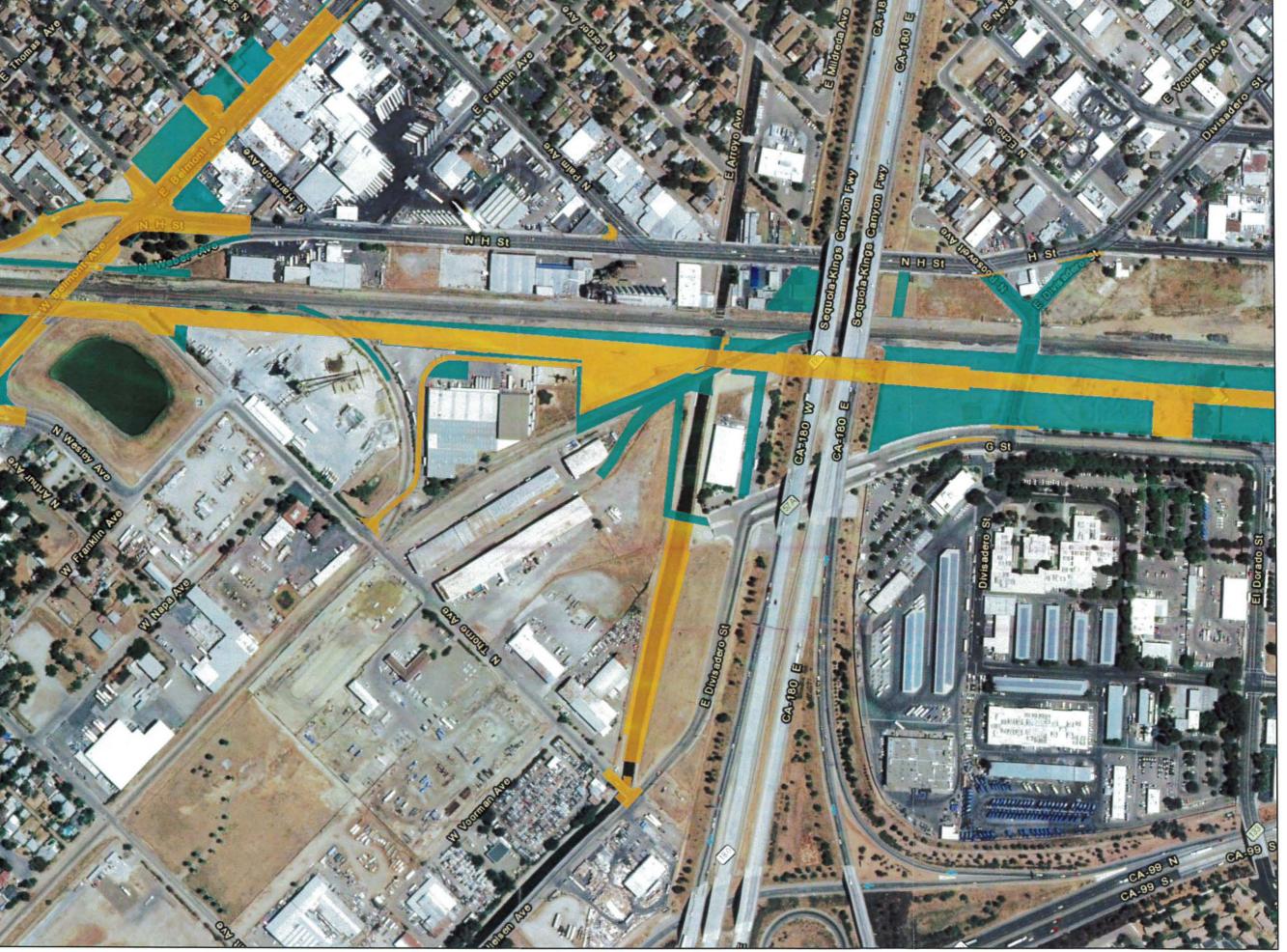
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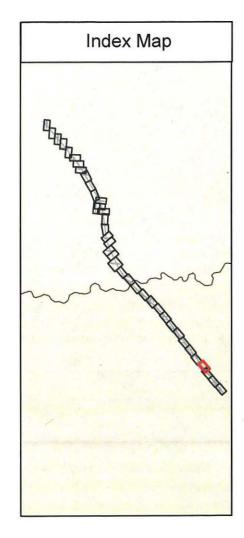


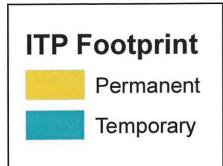




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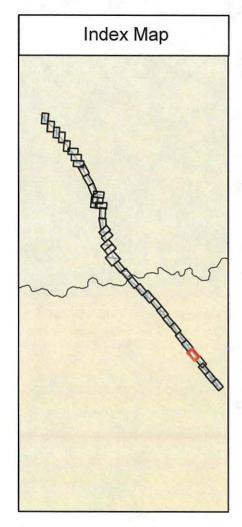


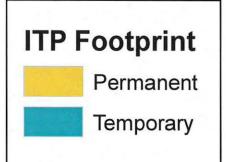








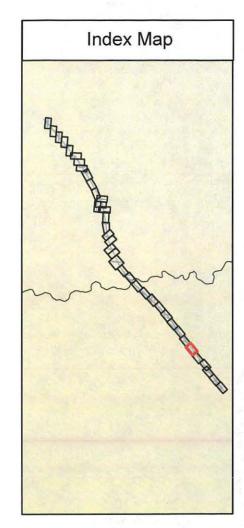


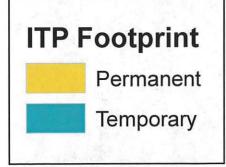


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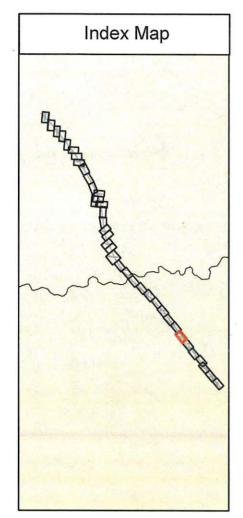






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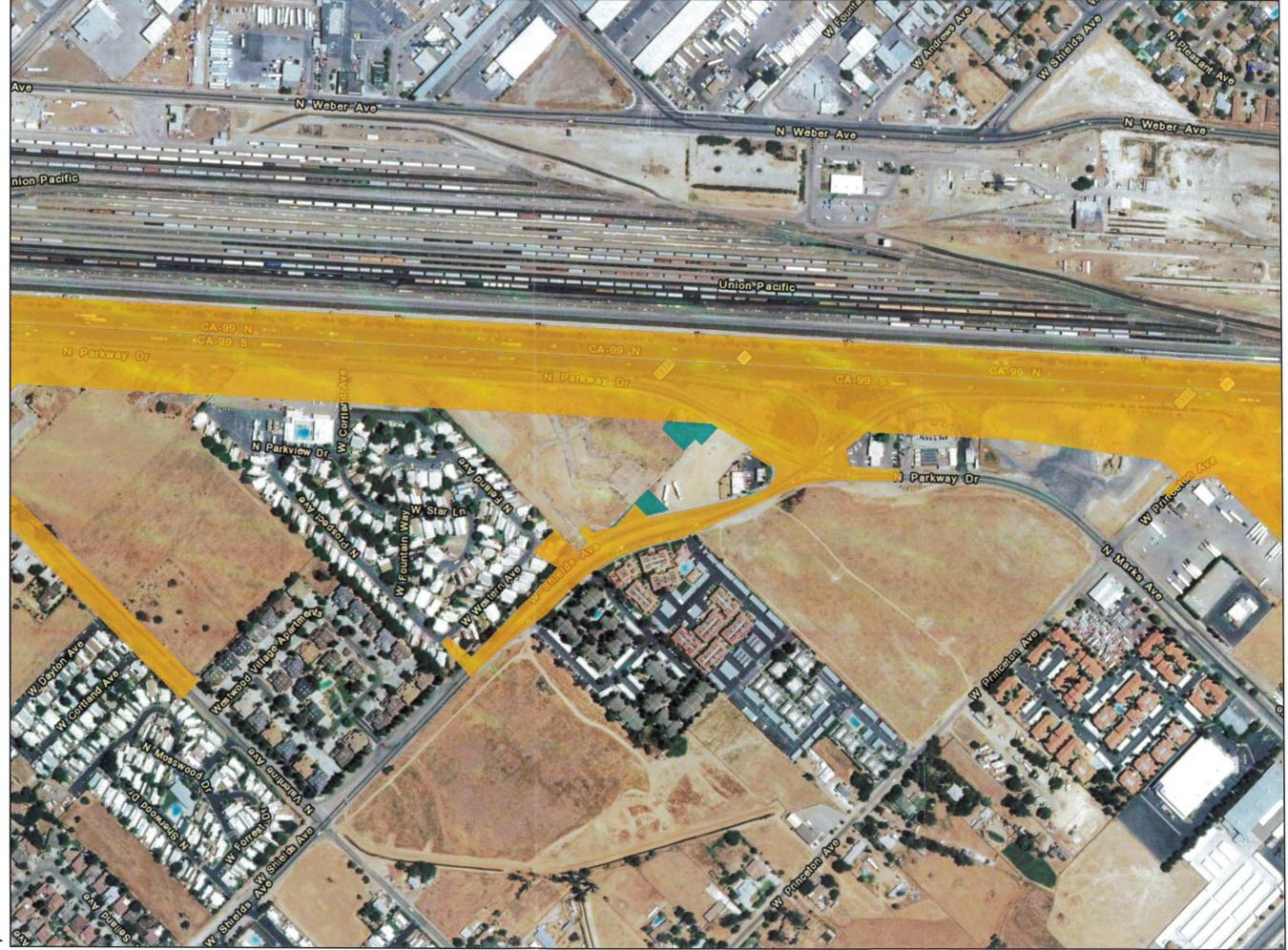


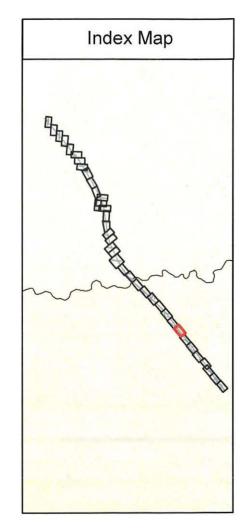


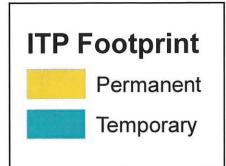


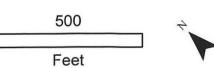
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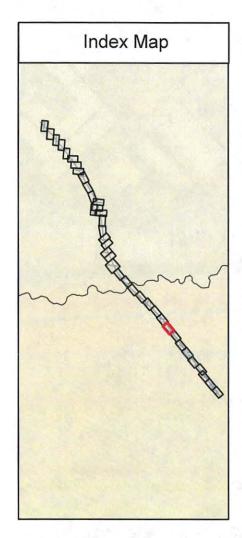








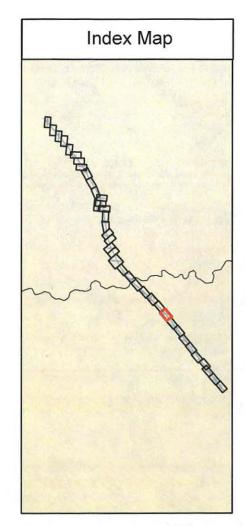


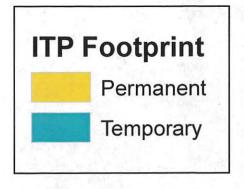




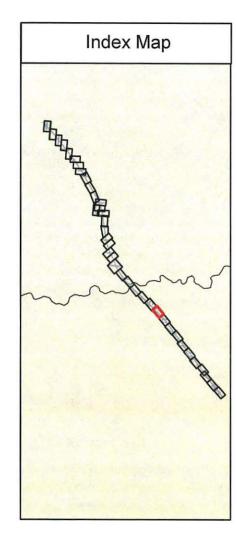










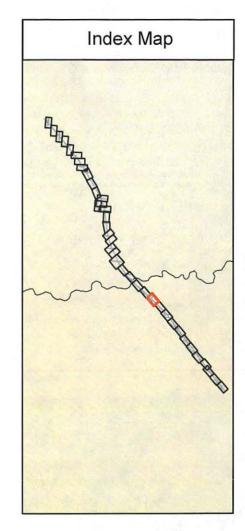




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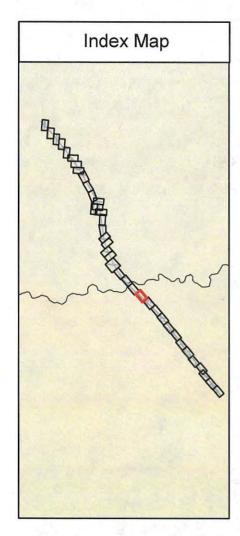
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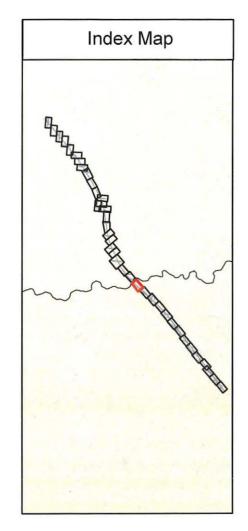


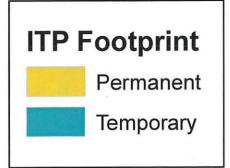






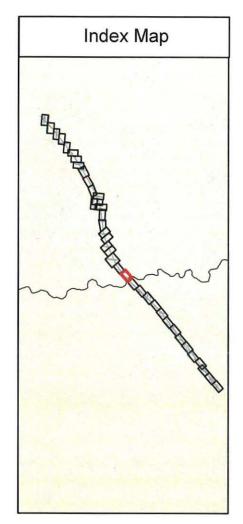
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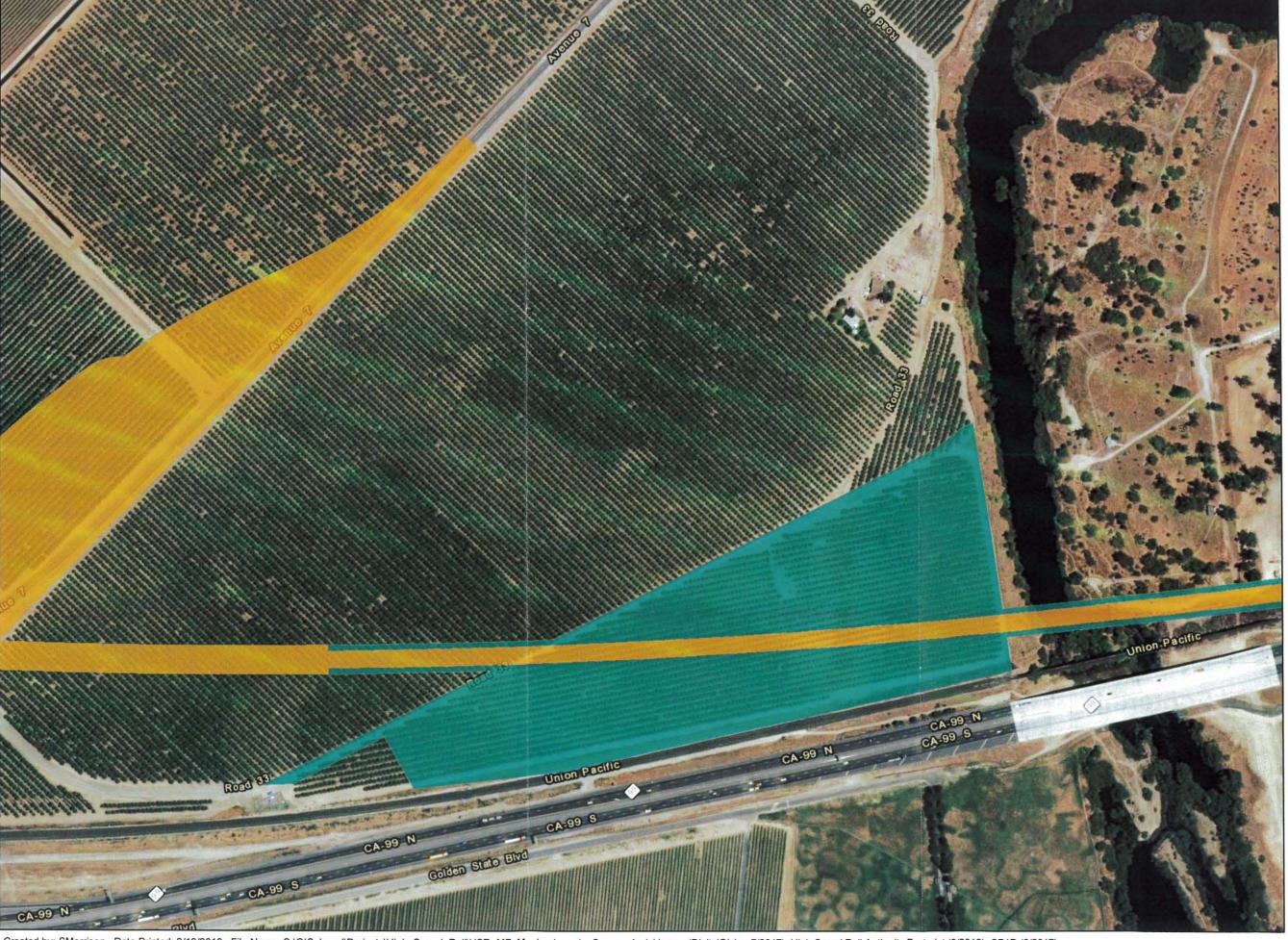
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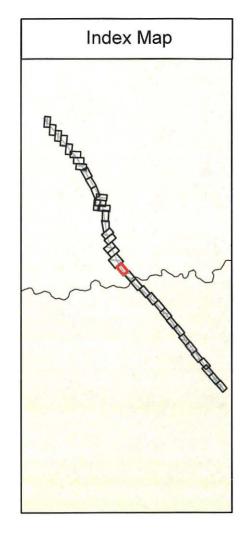




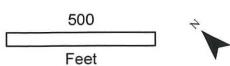


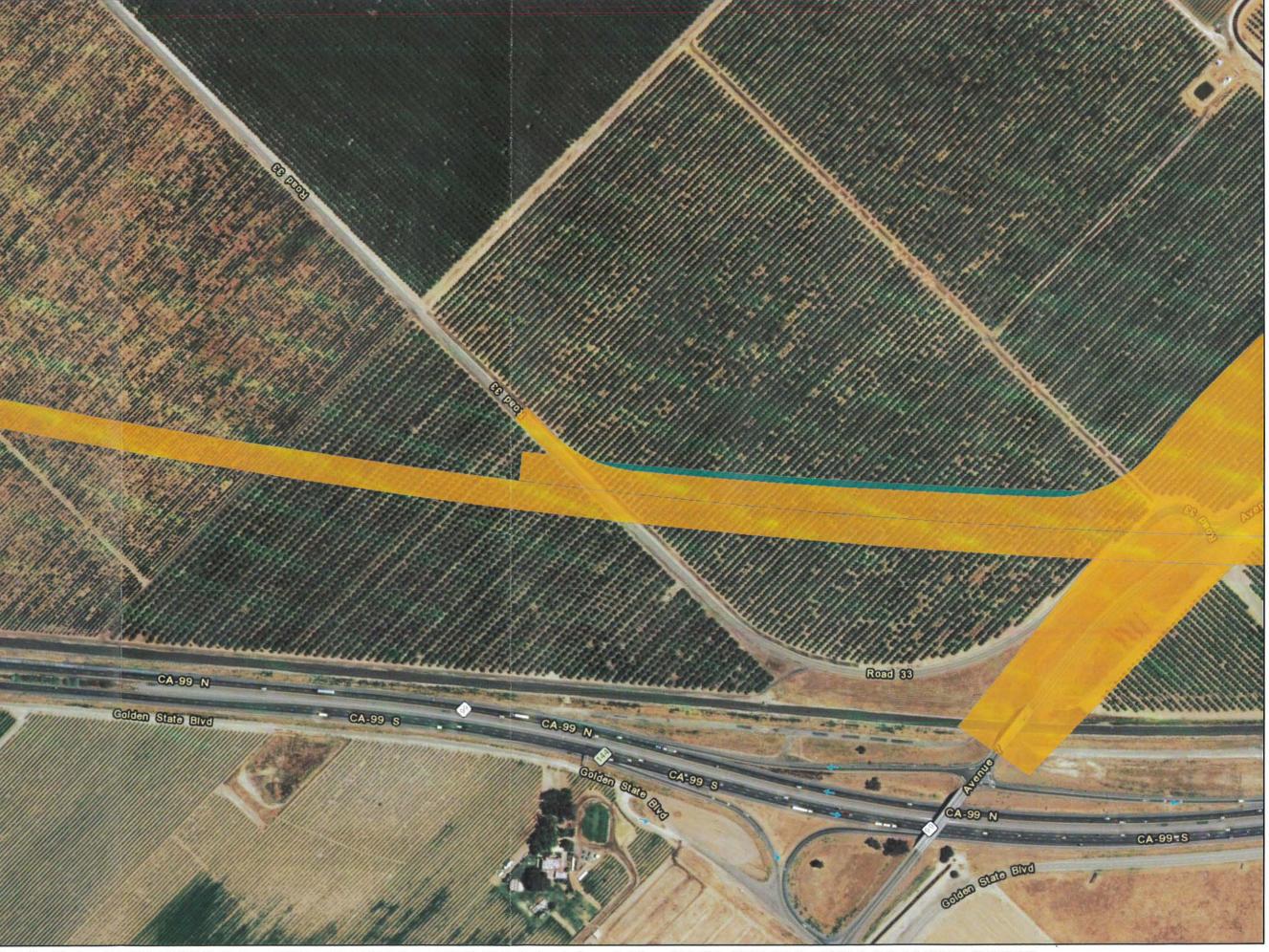
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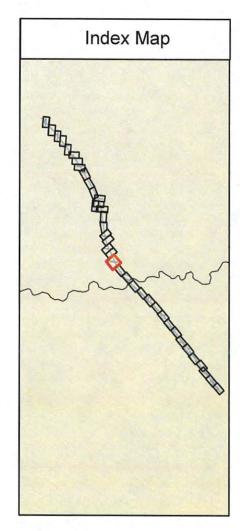


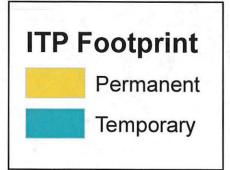




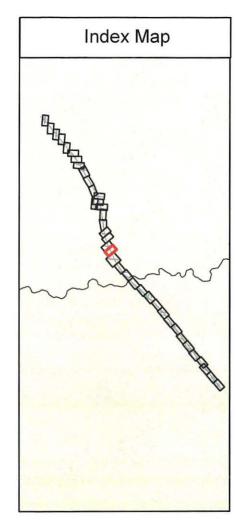










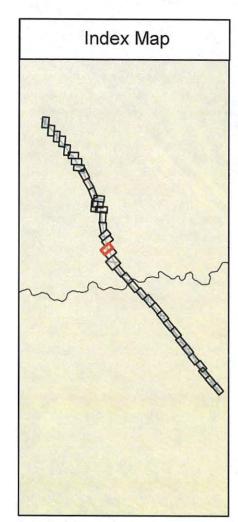




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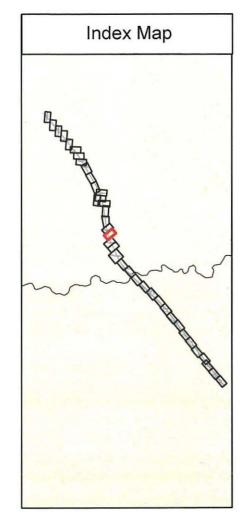


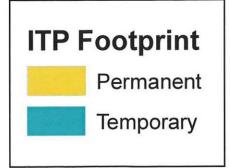


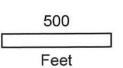






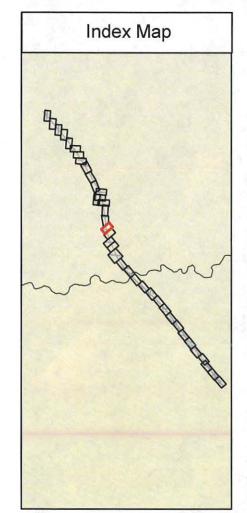


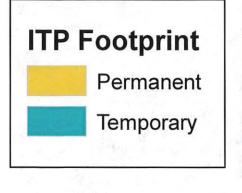


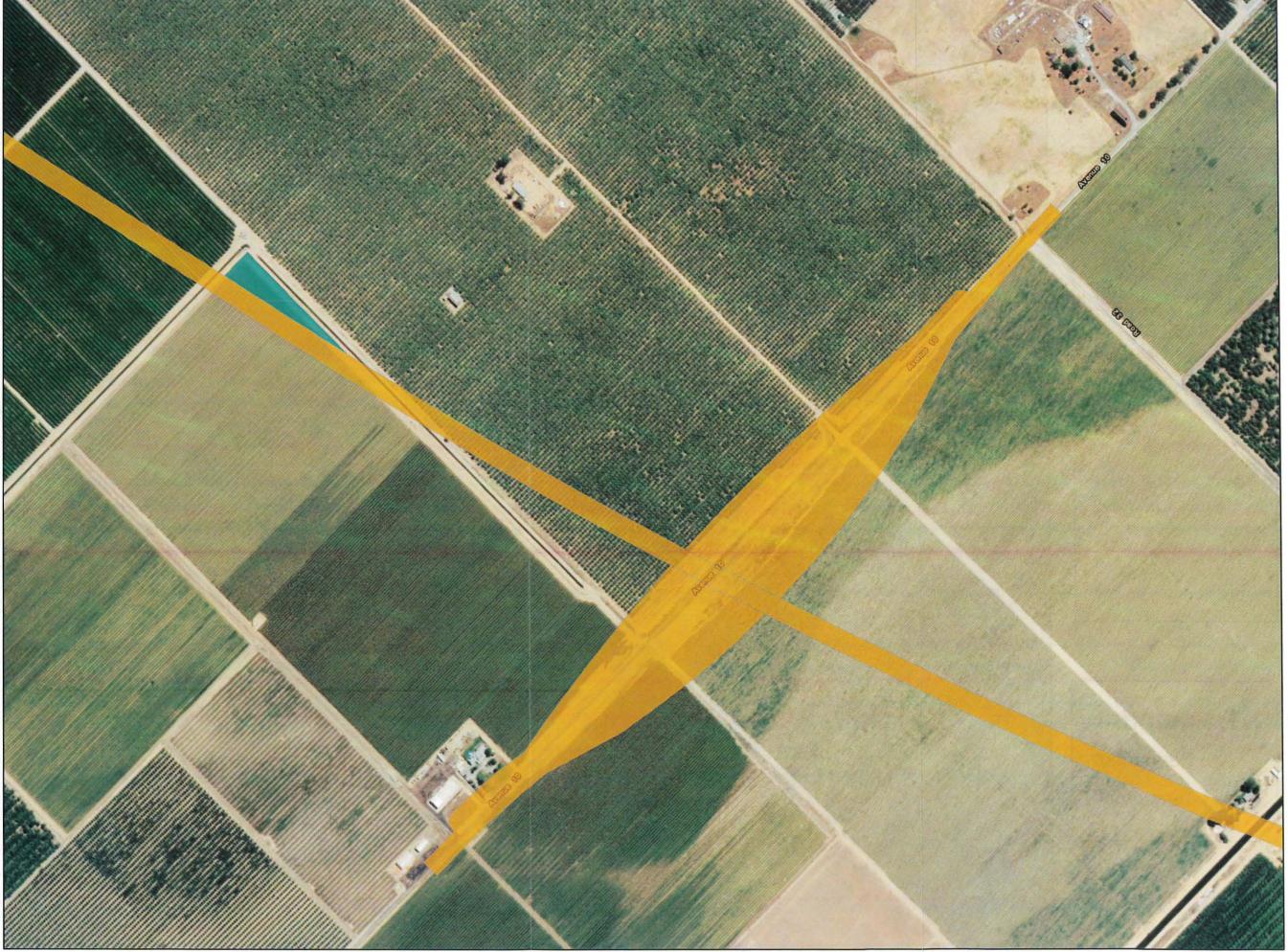


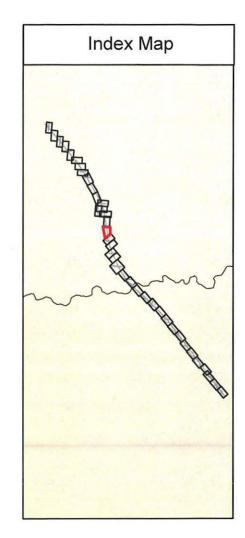


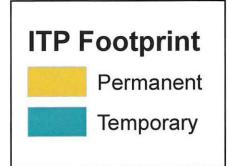


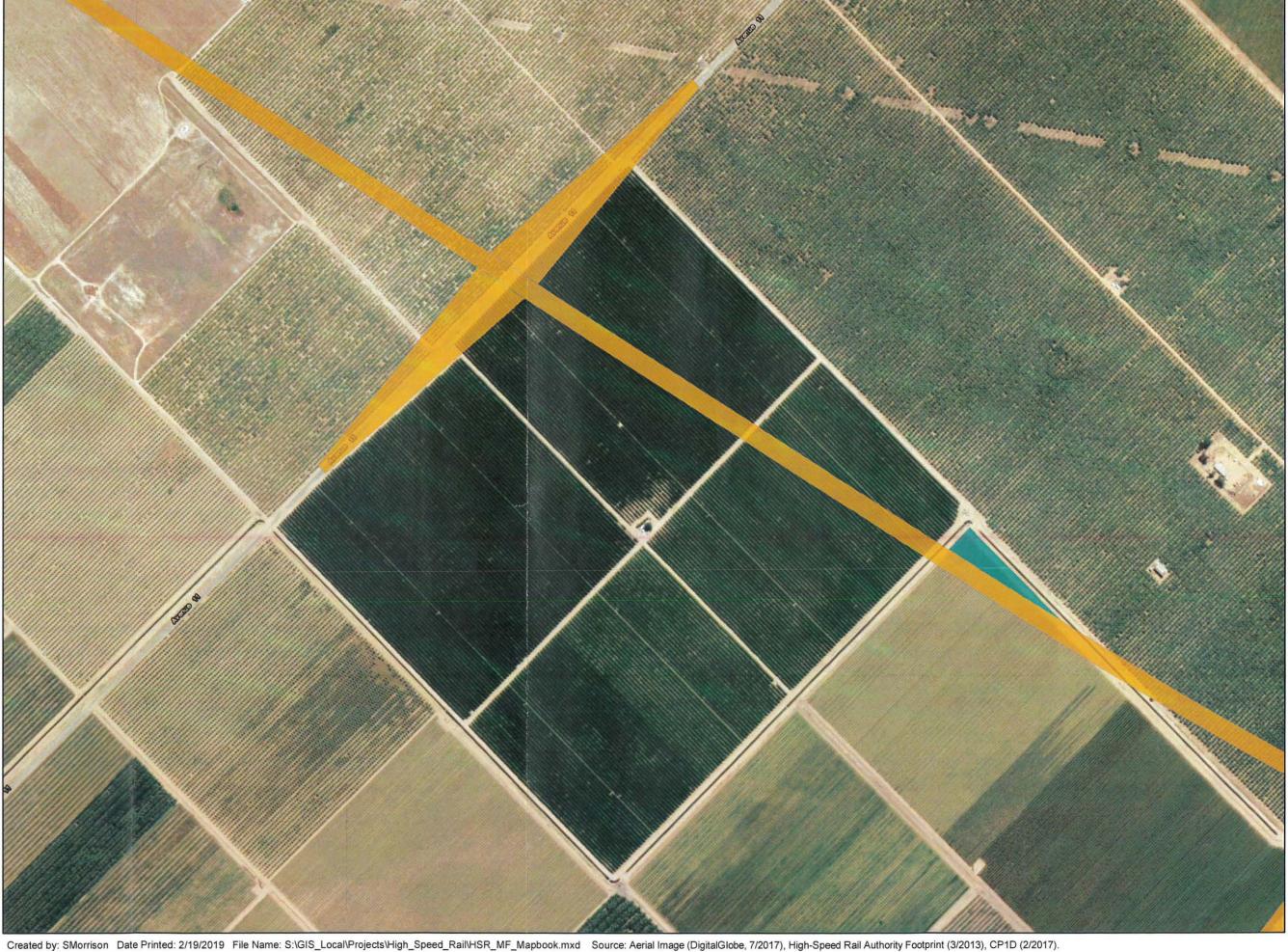


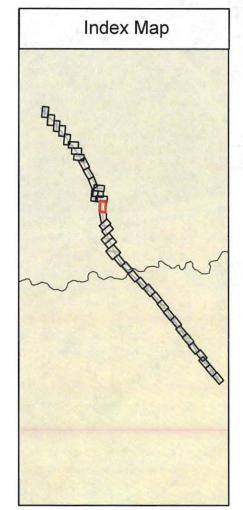


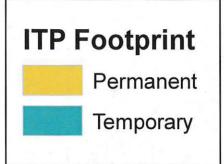






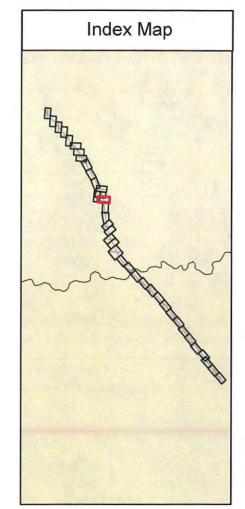


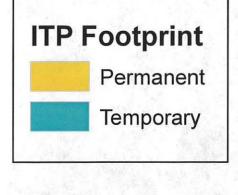


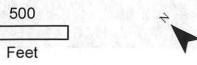




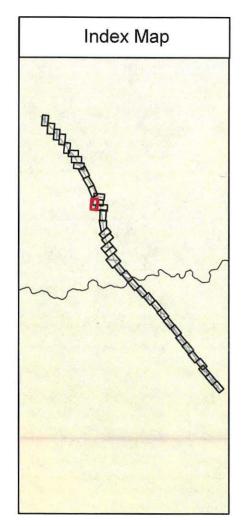


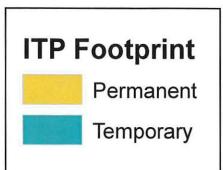






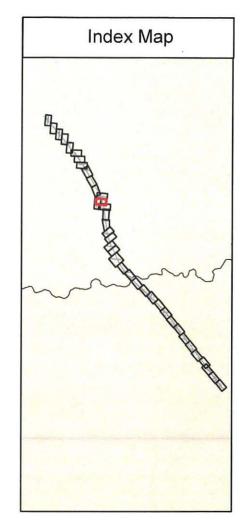


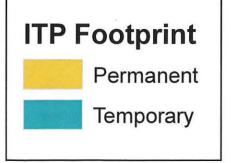


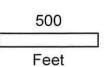


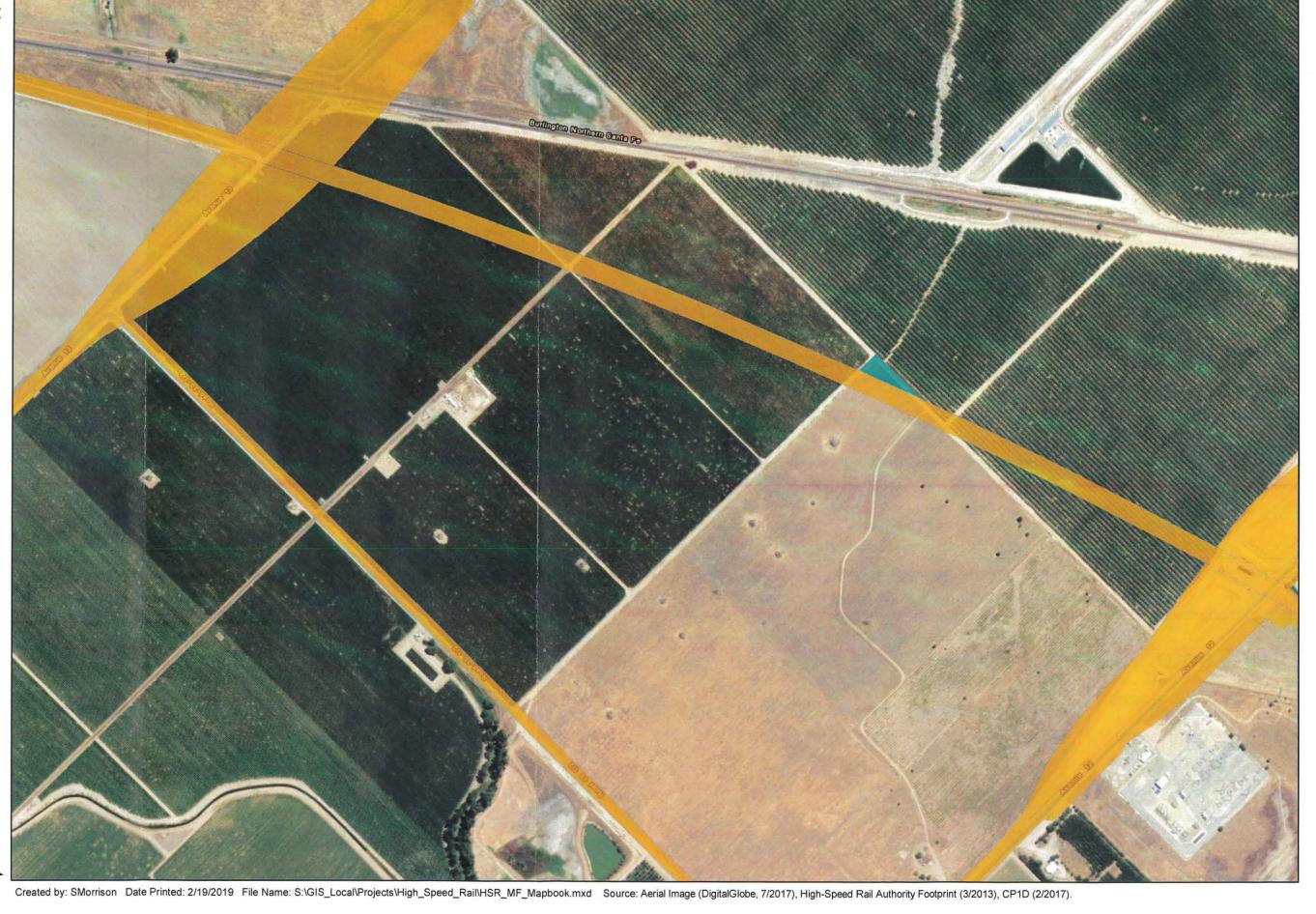
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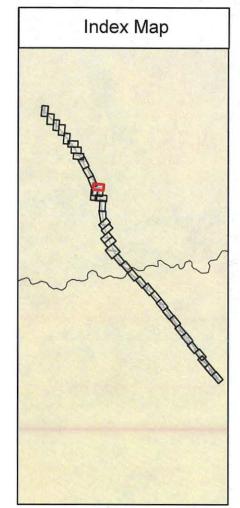


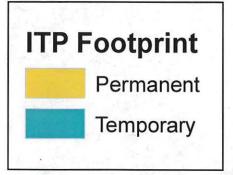


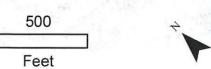




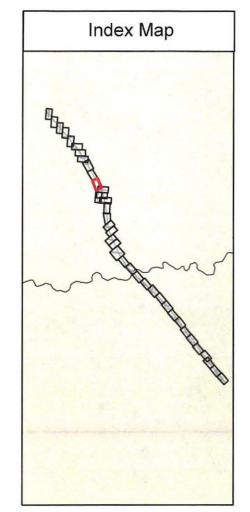








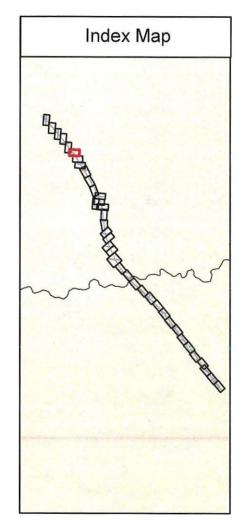


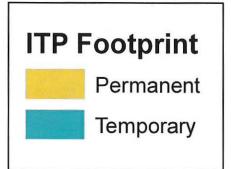






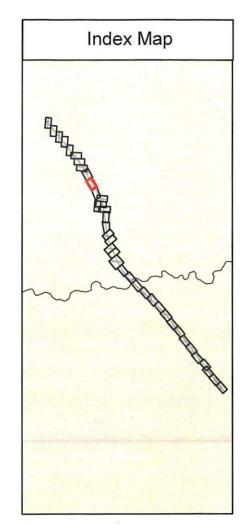


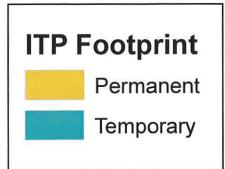






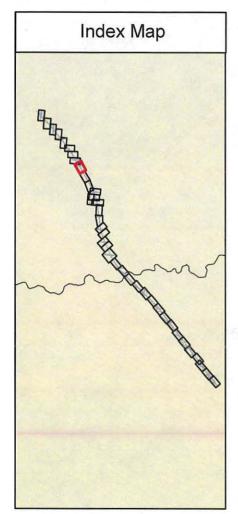








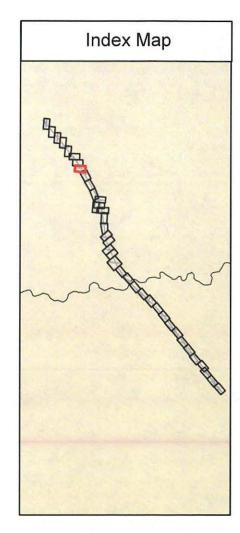


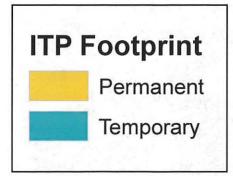


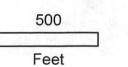


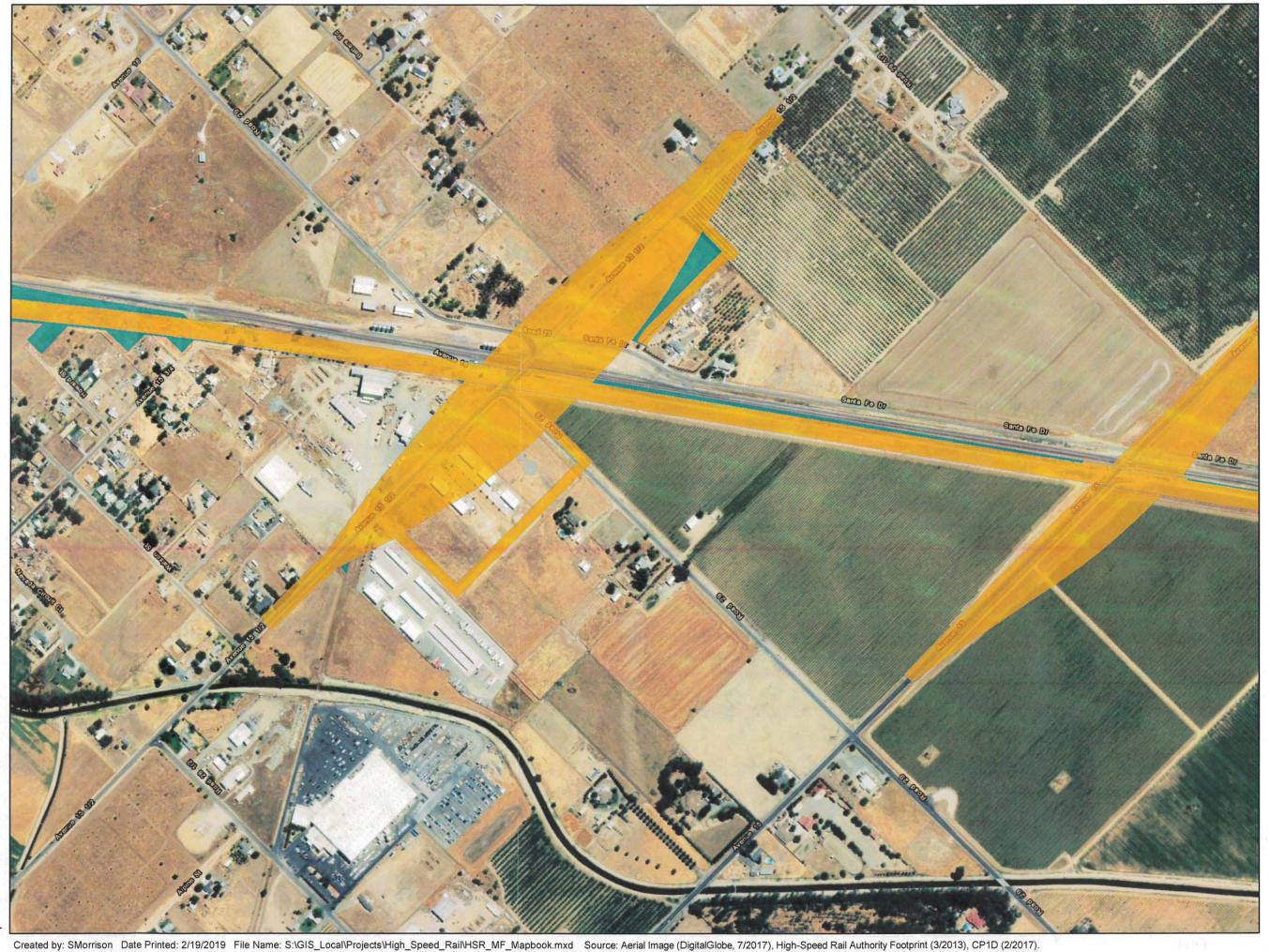


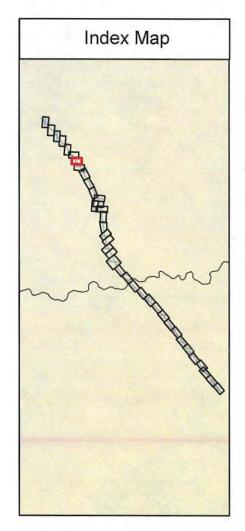






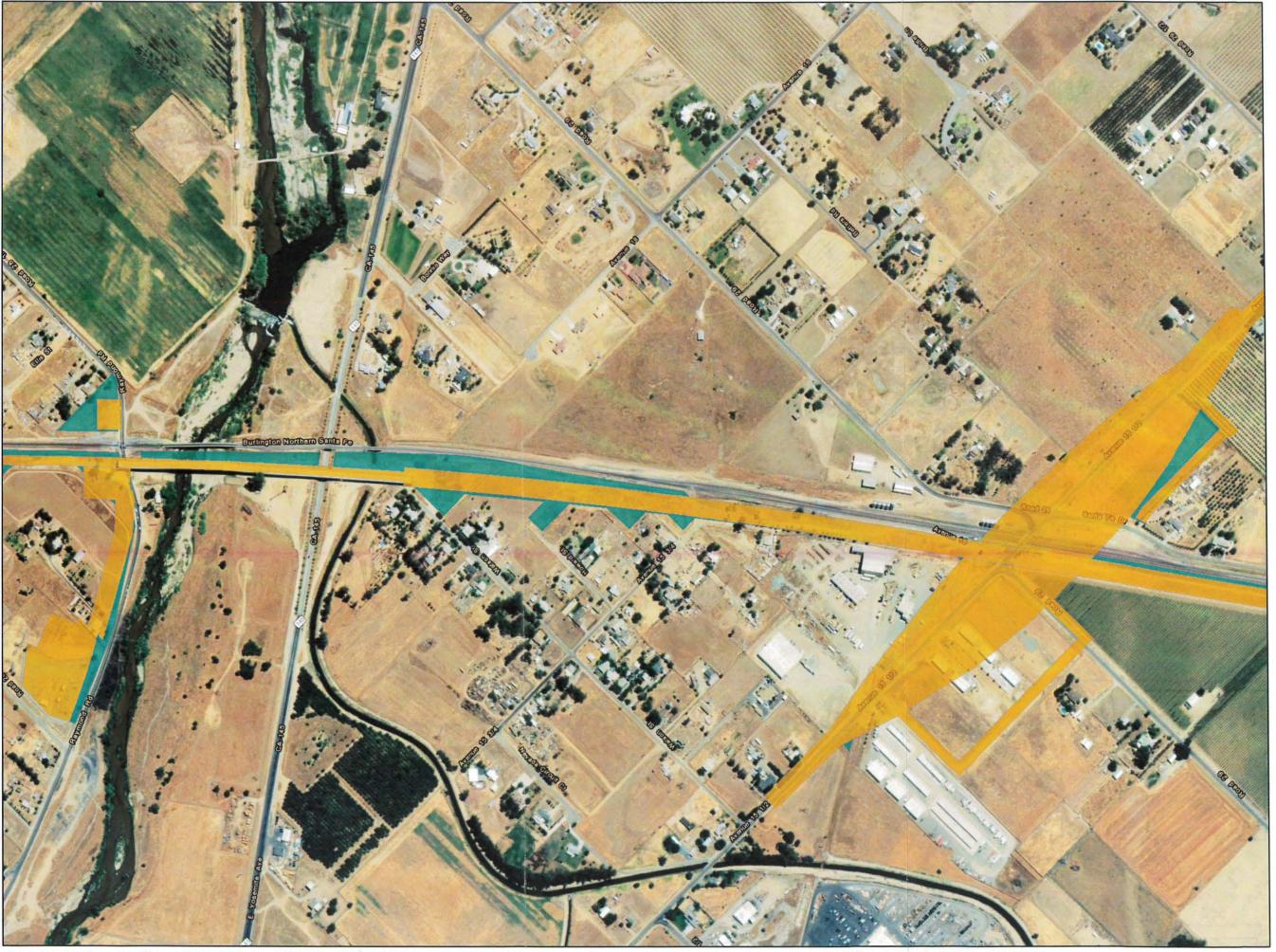


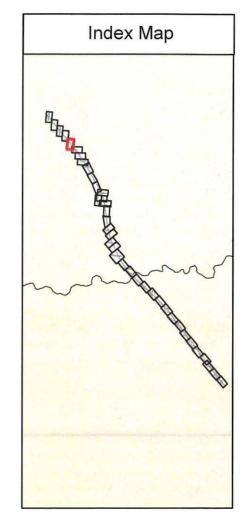


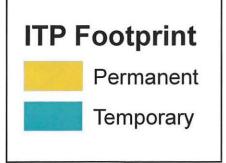


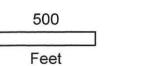




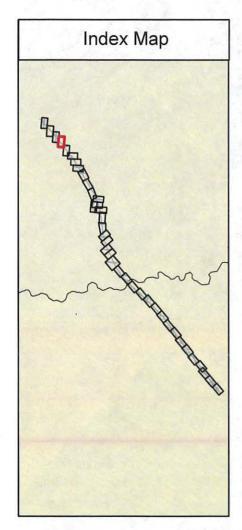








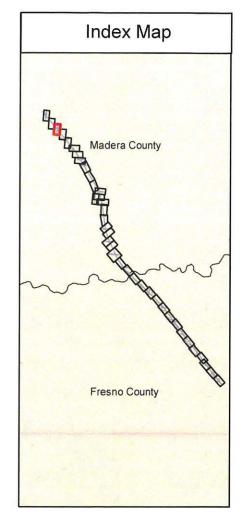








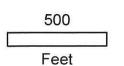






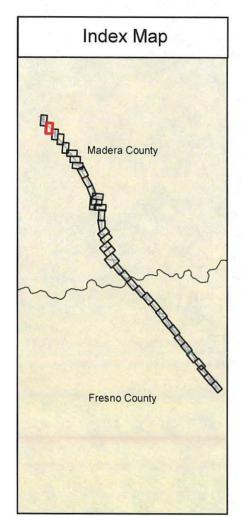
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