MINUTE ITEM

35

03/23/89
W 30005
Staff

STATEMENT OF STATE LANDS COMMISSION POLICY
REGARDING CONSTRUCTION OF NEW PIERS,
PIER EXTENSIONS, AND PIER MODIFICATIONS AT LAKE TAHOE

Calendar Item 35, attached, was pulled from the agenda prior to the meeting.

Attachment: Calendar Item 35.

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CALENDAR ITEM

A 7
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35

03/23/89
W 30005
Staff

STATEMENT OF STATE LANDS COMMISSION POLICY REGARDING CONSTRUCTION OF NEW PIERS, PIER EXTENSIONS, AND PIER MODIFICATIONS AT LAKE TAHOE

APPLICANT: State Lands Commission
1807 - 13th Street
Sacramento, California 95814

At its November 1978 meeting, the Commission su pended all leasing for construction of new piers at Lake Tahoe, excepting mooring buoys and multiple-use facilities, until June 30, 1979. The intent of this interim policy was to allow time for the Commission staff to explore funding sources, including a State appropriation in the Commission's budget, for the preparation and initiation of a research effort which would address the cumulative impacts associated with additional boating and recreation facilities in the Tahoe shorezone.

In August 1979, the Commission extended this policy through December 1979, subject to staff working: (1) with the California Tahoe Regional Planning Agency (CTRPA) to develop a full range of alternatives for management of the Tahoe shorezone; and (2) to acquire the funding necessary to conduct a scientific study of the environmental effects of development in the Tahoe shorezone.

The study of the littoral zone of Lake Tahoe focused on the cumulative impacts of pier development on littoral sediment transport. The study was funded by a $175,000 appropriation from the California Environmental License Plate Fund and was performed under contract with the Department of Geological Sciences at the University of Southern California.

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Results of the study showed that the littoral zone was highly segmented and there was little littoral zone transport of sediment between these segments. It also showed that most of the sediment that was present on the beaches was derived from the erosion of backshore cliffs and not from streams entering the lake. Evidence was found that piers did have a small effect on littoral sediment transport, but there was no evidence that this effect was cumulative. No studies were made of other environmental impacts - cumulative or otherwise - of added pier construction.

By adopting the Shorezone Ordinance of the Tahoe Regional Planning Agency (TRPA), the California Tahoe Regional Planning Agency (CTRPA) became the "Lead Agency", under the provisions of the California Environmental Quality Act of 1970, as amended, in the consideration of such private structures.

In January 1981, the Commission extended this policy until December 1983, when the Commission's study of the effects of piers would be completed. The Commission again recognized the status of the California Tahoe Regional Planning Agency as lead agency for purposes of CEQA.

Subsequent to this action, two developments occurred which required reconsideration of this policy. First, a new bistate compact for the Tahoe Regional Planning Agency (TRPA) was agreed to by California and Nevada. This compact required TRPA to prepare threshold studies for further development in the Lake Tahoe Basin. Second, both CTRPA and TRPA prohibited any additional construction of either single- or multiple-use piers in Lake Tahoe or the extension of existing piers. These prohibitions were designed to continue until TRPA updated the Regional Plan to consider the threshold limit for piers. This update was to be based upon the data supplied from the Commission study. In furtherance of this policy, neither agency was accepting permit applications for new piers or the extension (lengthening of structure, etc.) or replacement of existing piers.

As a result, the Commission, at its meeting of April 22, 1982, adopted a policy "under which it would no longer accept applications for new piers or pier extensions at Lake Tahoe until the Tahoe Regional Planning Agency (TRPA) has updated its Regional Plan for the shorezone of Lake Tahoe".

On July 15, 1987, TRPA adopted a shorezone ordinance to implement its previously adopted Regional Plan. Although the plan and ordinance allow the construction of new structures in Lake Tahoe, TRPA indicated that it is continuing to restrict development of new piers and pier replacements in certain areas

of the lake until an analysis is done to determine the impacts of structures on fish spawning and fish habitat. The general boundaries of the areas designated as prime fish habitat, fish spawning, and habitat restoration are shown on the maps contained in Exhibit "A". New construction of piers are generally not permitted in areas designated as prime fish habitat, fish spawning, or fish habicat restoration area. The proposed statement of Commission policy will continue the existing moratorium on applications for new piers or pier replacements located in such areas.

The TRPA and California Department of Fish and Game (D.F. & G.) can determine, however, that a proposed project appearing on the maps, as located in a designated prime fish habitat, fish spawning, or fish habitat restoration area, is not in such a location after reviewing the characteristics of the site in the field. The TRPA has begun issuing permits for piers and pier extensions in areas not designated as prime fish habitat, etc. on the maps in Exhibit "A" and in areas determined by both D.F. & G. and TRPA to be inaccurately designated as prime fish habitat, fish spawning, and fish habitat restoration areas.

CEQA DOCUMENTATION ON PIER APPLICATIONS

The Commission is receiving an increasing number of applications for new piers and modifications and/or extensions to existing piers at Lake Tahoe. This is a direct result of changes in the policies of the TRPA as described above. Each of these applications is subject to the provisions of the CEQA and the Commission is the Lead Agency.

In processing such applications, staff will determine, in consultation with the TRPA, the Department of Fish and Game, and other relevant agencies, whether the proposed project qualifies for a "categorical exemption" from the CEQA or, because of its circumstances, requires the preparation of an "initial study". The conduct of an initial study will provide the information necessary for staff to determine if the project qualifies for a "Negative Declaration". If it is determined that an initial study is required, the applicant will be sent a reimbursement agreement for signature. As with all other environmental analyses done by staff, the applicant will pay for the actual staff time necessary to complete the environmental process. Staff estimates that such agreements should be in the amount of $2,500.

Staff from the Commission and from TRPA have recently met to better coordinate the environmental and technical reviews of shorezone projects. The respective staffs are proposing a

process to avoid duplication of efforts in both application and CEQA processing. Under this process, applicants would be encouraged to file concurrent applications with both agencies. Commission staff would then complete the necessary environmental analysis and address the concerns and needs of both agencies. This analysis could subsequently be used by both agencies. In those instances where TRPA has already received an application and has proceeded with project review under the NEPA, Commission staff will attempt to use their assessment to the maximum extent feasible in the development of the Commission's CEQA documentation.

PUBLIC TRUST INVESTIGATION

Subsequent to the establishment of the pier policy by the the Commission in 1978, the California Supreme Court confirmed the State's ownership to the low water mark at Lake Tahoe and other waterways of California. The Appeals Court, in Fogerty v State, then held that a Public Trust easement on those lands between the high water and low water elevation in Lake Tahoe lies between elevation 6,223 feet and 6,228.75 feet, Lake Tahoe Datum.

Many trust uses occur at Lake Tahoe including: recreational fishing, beach use, environmental protection, boating, water-skiing, sailing, and swimming, among others. Private recreational piers, under some circumstances, may conflict with these other Public Trust uses at particular shorezone locations. Staff believes that the full range of trust uses should be reviewed and considered during the processing of any application for modification, replacement, or extension of an existing pier, or construction of a new pier. This review should include: (1) consulting with other agencies whose programs affect the Lake Tahoe Basin about uses which may exist in the area; and (2) an actual site visit so that staff can verify whether any potential conflicts might occur as a result of the project. Staff's findings would be included in subsequent calendar items for the Commission's consideration.

Staff recommends that the cost of the investigations, estimated to be approximately $700 each, should be borne by applicants. In the case of applications requiring an initial study, the cost of the trust investigation will be included in the environmental processing cost, i.e., not in addition to the $2,500 discussed previously.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

   Authority: P.R.C. 21065 and 14 Cal. Code Regs. 15378.

AB 884: N/A.

EXHIBIT: A. Habitat Maps.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.

2. CONTINUE THE COMMISSION'S MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW PIERS OR PIER REPLACEMENTS IN AREAS OF LAKE TAHOE WHICH ARE DESIGNATED AS PRIME FISH HABITAT, FISH SPAWNING, OR FISH HABITAT RESTORATION AREAS AND AUTHORIZE STAFF TO ACCEPT AND PROCESS ONLY THOSE APPLICATIONS FOR NEW PIERS, AND APPLICATIONS FOR EXTENSIONS, REPLACEMENTS, OR MODIFICATIONS OF EXISTING PIERS AT LAKE TAHOE, WHICH HAVE BEEN EITHER: 1) RECEIVED AND ARE ACCOMPANIED BY A VALID TRPA PERMIT, I.E., ISSUED BY TRPA FOR FACILITIES DESCRIBED HEREIN AND SIGNED AND ACCEPTED BY THE APPLICANT; OR 2) CERTIFIED AS HAVING BEEN FILED CONCURRENTLY WITH THE TRPA.

3. DIRECT STAFF TO CONTINUE TO WORK WITH THE STAFF OF THE TRPA AND OTHER AGENCIES TO DEVELOP A CONCURRENT APPLICATION PROCESS BETWEEN THE COMMISSION AND THE TRPA WHICH WILL CONSOLIDATE NECESSARY ENVIRONMENTAL REVIEW OF THE ABOVE-SPECIFIED PROJECTS AND ALSO REDUCE THE TIME REQUIRED BY BOTH AGENCIES TO CONSIDER PROJECT APPLICATIONS.

4. DIRECT STAFF TO CONSIDER ALL APPLICABLE PUBLIC TRUST USES OF LAKE TAHOE WHEN EVALUATING APPLICATIONS FOR NEW PIERS, PIER REPLACEMENTS, MODIFICATIONS, OR EXTENSIONS, AND TO EVALUATE AND REPORT USES, WHICH COULD BE AFFECTED, TO THE COMMISSION WHEN IT CONSIDERS AN APPLICATION FOR SUCH PROJECTS.

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5. DIRECT STAFF TO TAKE ALL STEPS NECESSARY TO DEVELOP AND IMPLEMENT A PROCESS TO REIMBURSE THE COMMISSION FOR ALL COSTS ASSOCIATED WITH SUCH PUBLIC TRUST INVESTIGATIONS.

6. DIRECT STAFF TO EVALUATE THIS POLICY PERIODICALLY TO ENSURE THAT IT REPRESENTS ACCURATELY THE PROGRAMS AND POLICIES OF THE TRPA AND OTHER AGENCIES AFFECTING LAKE TAHOE AND TO RESUBMIT SUCH POLICY TO THE COMMISSION FOR AMENDMENT WHEN APPROPRIATE.

7. AUTHORIZE STAFF TO PURSUE, IN CONJUNCTION WITH THE OFFICE OF THE ATTORNEY GENERAL, ALL STEPS NECESSARY, INCLUDING LITIGATION, TO ENFORCE THE PROVISIONS OF THIS POLICY AND TO BRING FACILITIES CURRENTLY IN TRESPASS UNDER PERMIT TO THE COMMISSION.

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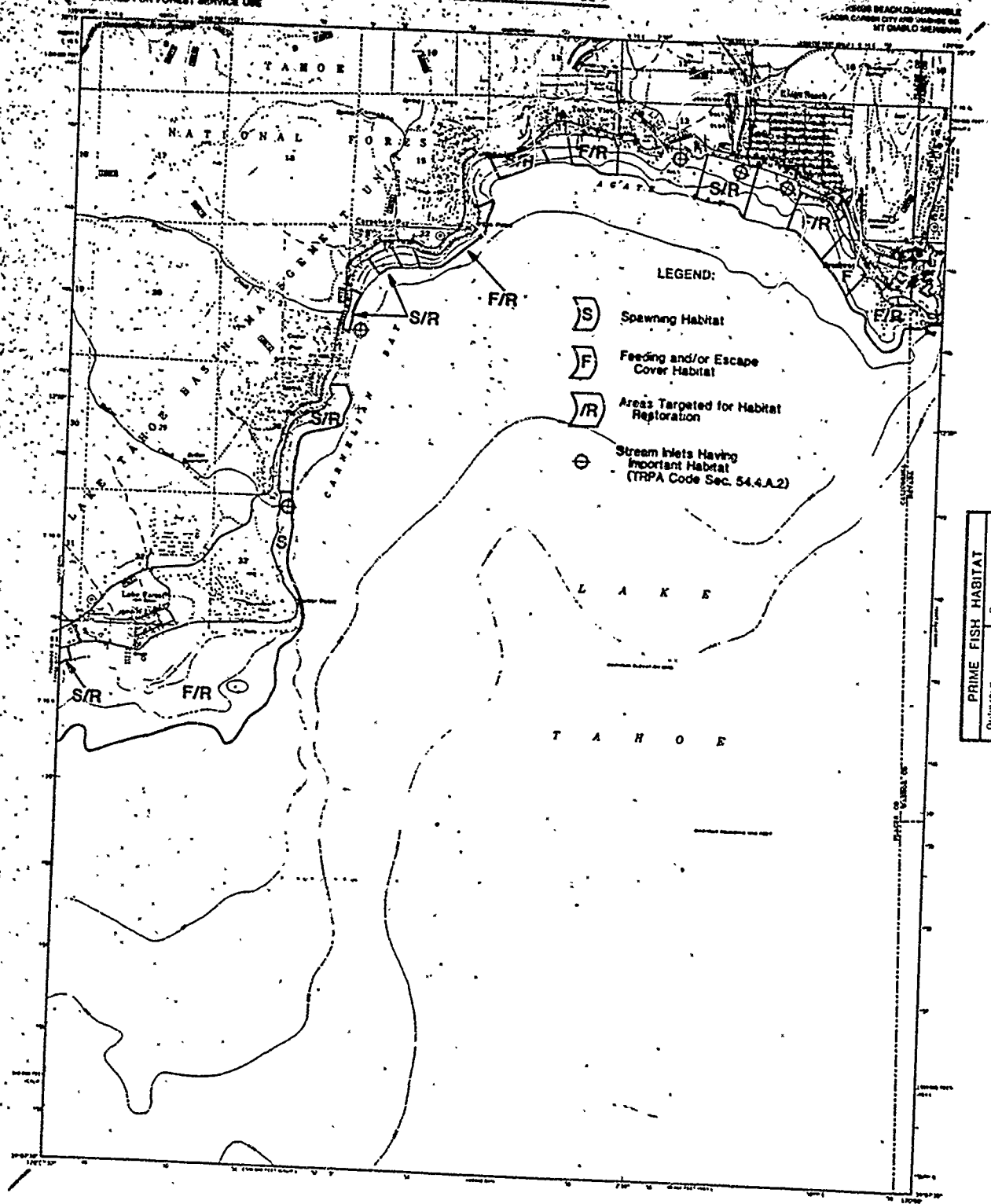
EXHIBIT "A"



PRIME FISH HABITAT
Originator
Revised

PRIMARY BASE SERIES MAP
KINGS BEACH, CALIF.-NEV.
F. S. NO.538-1C
1978

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EXHIBIT "A"

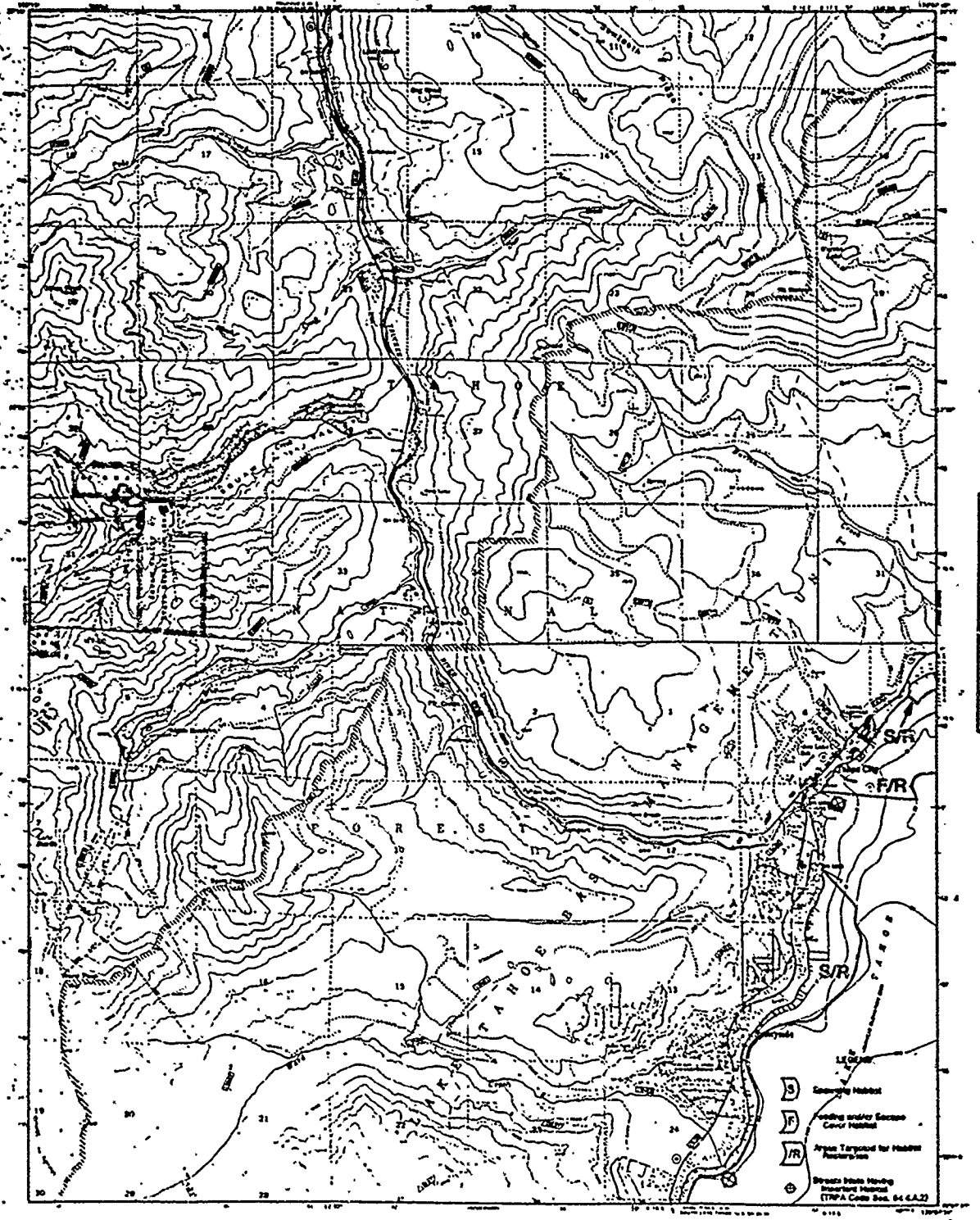

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EXHIBIT "A"

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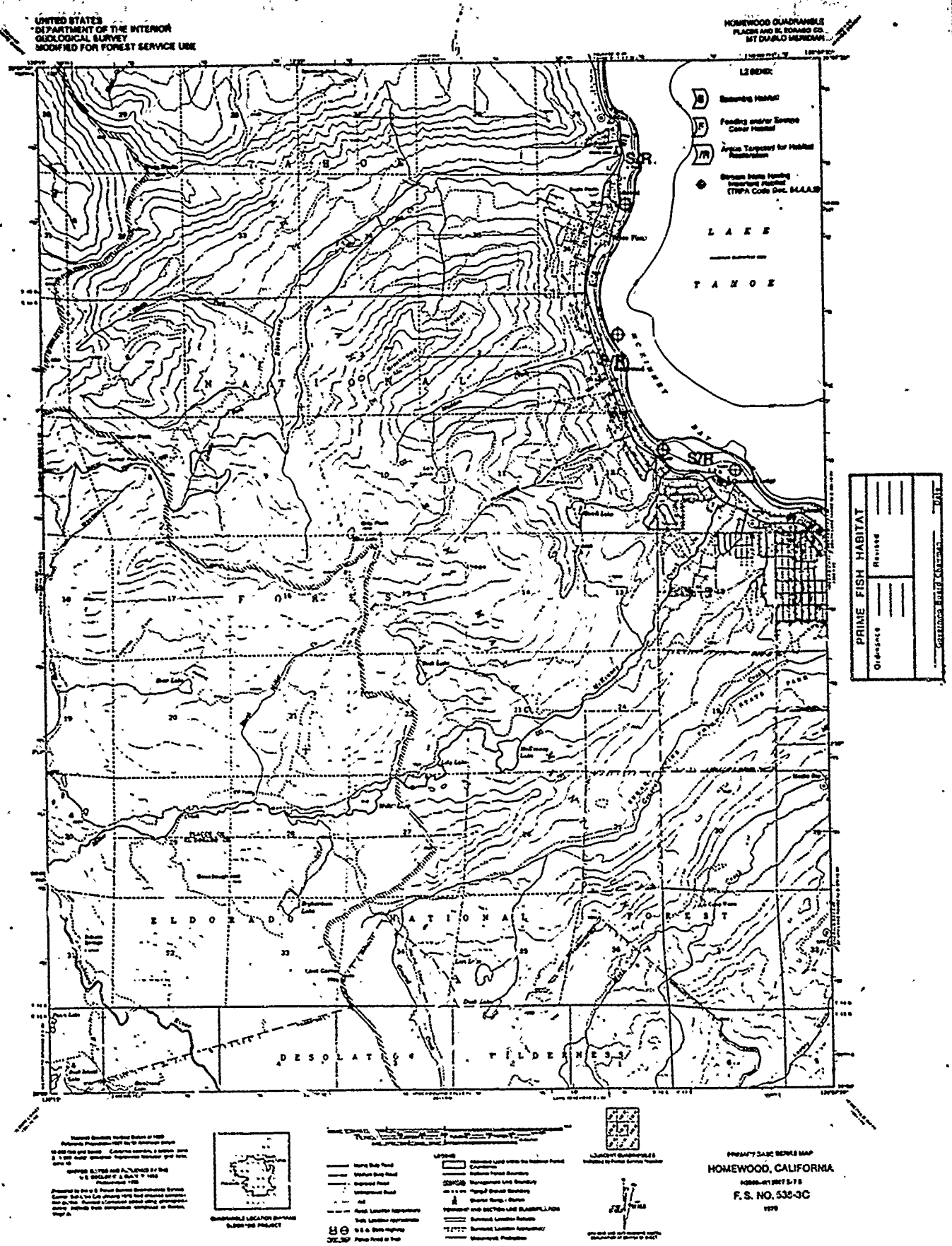

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EXHIBIT "A"

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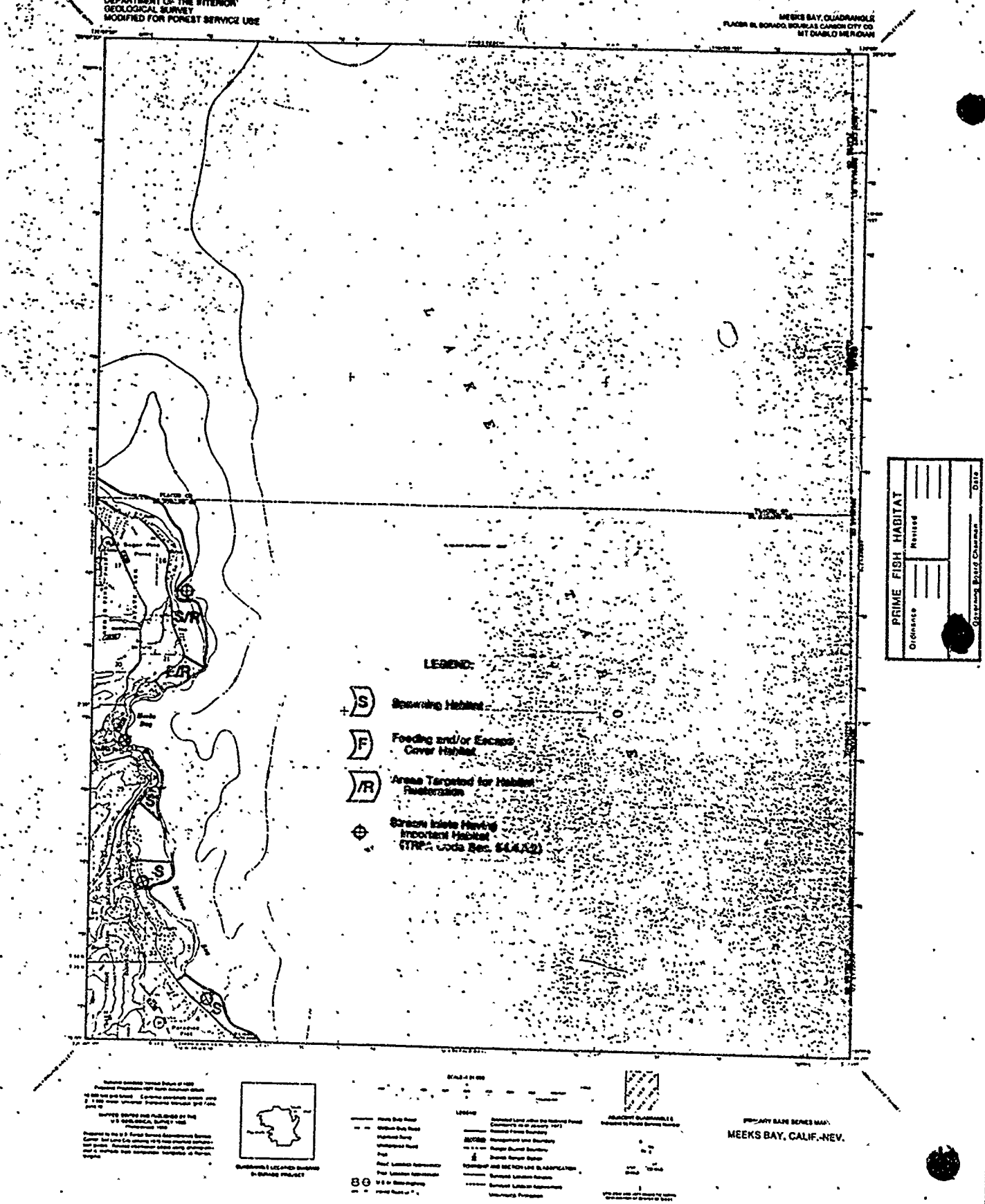

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EXHIBIT "A"

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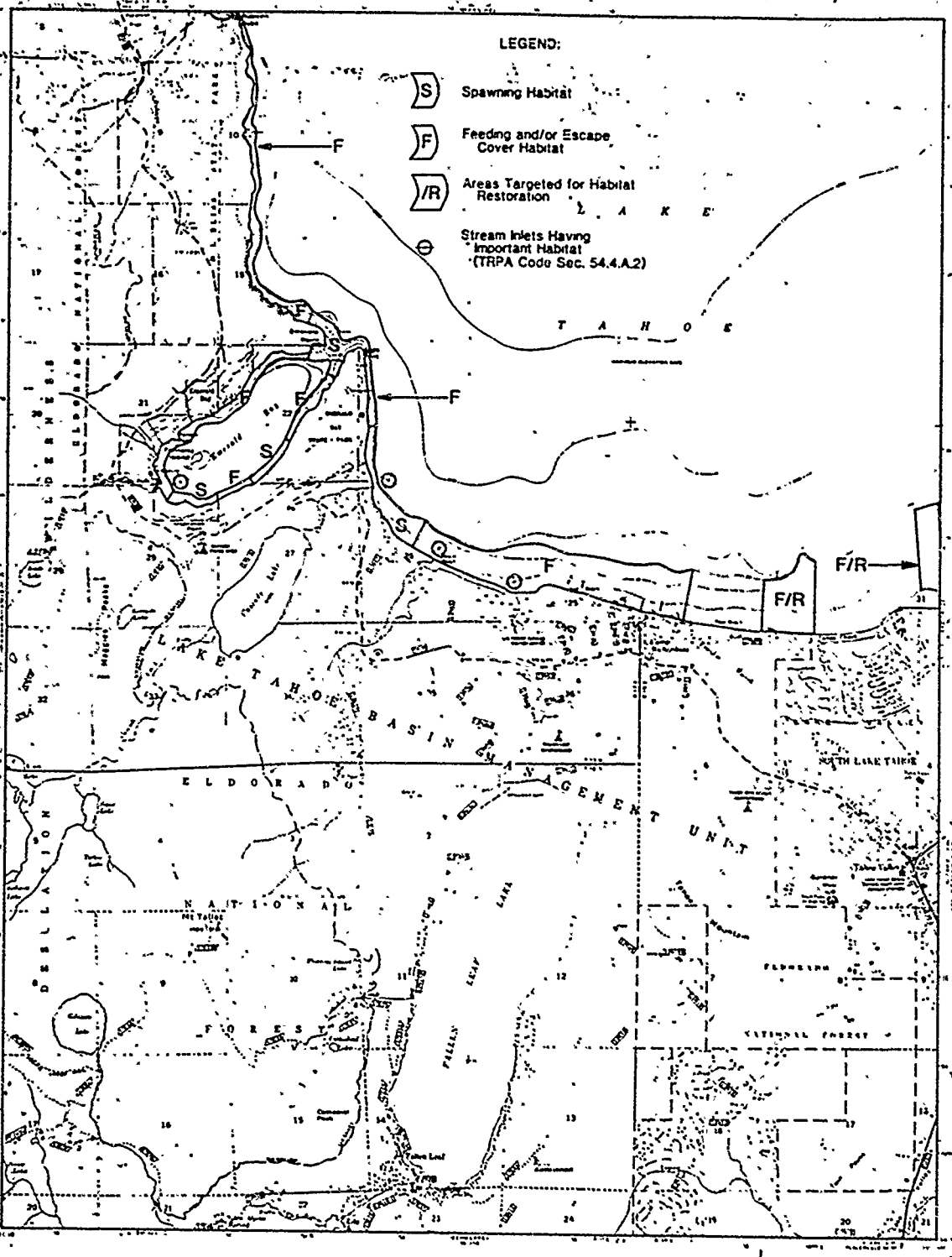
UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
MODIFIED FOR FOREST SERVICE USE

EMERALD BAY, QUADRANGLE
EL DORADO CO
MT DIABLO MERIDIAN



PRIMARY BASE SERIES MAP
EMERALD BAY, CALIFORNIA

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EXHIBIT "A"

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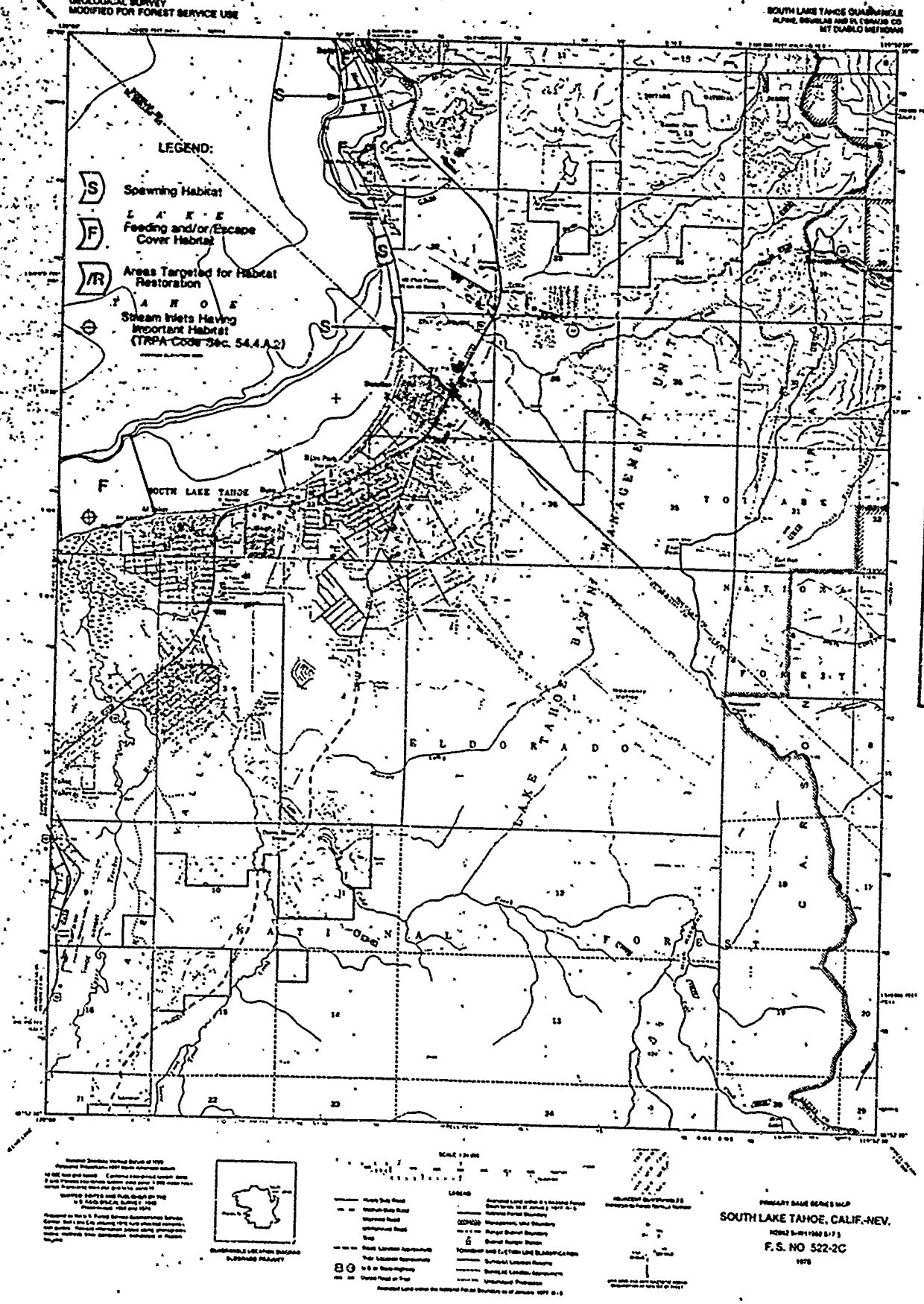

PRIMARY BASE SERIES MAP
SOUTH LAKE TAHOE, CALIF.-NEV.
F.S. NO 522-2C
1978

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