MINUTE ITEM
This Calendar Item No. 27
was approved as Minute Item
No. 27 by the State Lands
Commission by a vote of 3
to 0 at its 7/10/89
meeting.

CALENDAR ITEM

27

A 7

S 1

07/10/89
W 30005
Staff

DIRECTIONS TO STAFF OF THE STATE LANDS COMMISSION
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 suspended all leasing of State lands for construction of new piers at Lake Tahoe, excepting mooring buoys and multiple-use facilities, until June 30, 1979.

The intent of this action was to allow time for the Commission staff to explore funding sources, including a State appropriation in the Commission's budget, for the conduct 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 action 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 Commission's 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.

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 indicates 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 locations designated as prime fish habitat, as fish spawning areas, and habitat restoration areas are shown on the maps contained in Exhibit "A". New construction of piers are generally not permitted in these areas. The proposed directions to staff of the Commission 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 an area which appears on the maps as prime fish habitat, fish spawning, or a fish habitat restoration area, is not properly designated after a field review of the site. 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.

CEQA DOCUMENTATION ON PIER APPLICATIONS

In the course of research on the environmental resources in the shorezone of Lake Tahoe, staff became aware of the listing, by the Department of Fish and Game, of **Rorippa subumbellata**, the Tahoe Yellow Cress (Rorippa) as an endangered species under the provisions of the State's Endangered Species Act. Under Section 2053 of the Fish and Game Code, it is the policy of the State that agencies should not approve projects which would jeopardize the continued existence of any endangered species, or result in the destruction or adverse modification of habitat essential to the continued existence of the species, if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat.

In addition, whenever a project has the potential to reduce the number or restrict the range of a rare or endangered plant or animal, the CEQA Lead Agency (the Commission) must find that the project may have a significant effect on the environment and require an EIR to be prepared before acting on the project (CEQA Guidelines Section 15065).

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Under the aegis of Commission and TRPA staff, a group of agencies has met on three occasions this year (3/22, 4/10, and 5/22) to develop a process whereby the Commission could consider relevant projects and meet its obligations under law. A partial listing of the involved agencies includes: TRPA, the Departments of Fish and Game and Parks and Recreation, the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the United States Forest Service, and the California Native Plant Society. A full listing of group members is attached as Exhibit "B". Staff has also met (5/12) with all of the agents, Exhibit "C", whose clients have submitted applications to the Commission for projects at Lake Tahoe.

The Commission is receiving an increasing number of requests to perform "maintenance activities" on existing piers, and applications for renewal of permits for existing piers, applications for facilities in trespass and applications for new piers and modifications and/or extensions to existing piers at Lake Tahoe. The latter two types of applications are a direct result of changes in the policies of the TRPA as described above. Each of the applications listed above is subject to the provisions of the CEQA and the Commission is the Lead Agency.

The requests before the Commission are of five major types:

1. maintenance of existing piers under permit;

2. renewal of permits for existing piers;

3. applications to permit existing piers; in their current status;

4. repairs, extensions, modifications of existing permitted piers where such activities affect the lake bed below the 6223 foot elevation (low water); and

5. new construction or reconstruction, with or without modifications, where such activities affect the shorezone both above and below the 6223 foot elevation.

On the bases of consultations with the TRPA, the Department of Fish and Game, among others indicated in Exhibits "B" and "C", as well as the Office of the Attorney General, staff of the Commission has developed five distinct processes for the above projects:

1) MAINTENANCE OF EXISTING FACILITIES

The Commission's permit requires that piers be kept in an acceptable level of repair. Staff has received numerous requests to perform maintenance activities, replacement of decking, selective pilings, etc., to comply with said requirement. While on their face such activities are contemplated under existing permits to occur without Commission authorization, staff believes the provisions of the State's Endangered Species Act obligate it to review such proposed maintenance to ensure that no "...destruction or adverse modification of habitat essential to the continued existence of the species..." (Rorippa) will occur.

2) PERMIT RENEWAL OF EXISTING PIERS, NO CHANGES

Staff believes these applications, under the provisions of CEQA, qualify for a categorical exemption, Class 1, Existing Facilities. Based on available information, existing piers are not believed to have any adverse impacts on the Rorippa or its habitat. Staff recommends that the term of the pier permit be reduced from ten (10) years to a term of five (5) years. Should new information indicate that existing piers have an impact on this endangered species, the Commission could modify the terms of the permit earlier.

In addition, staff has developed an agreement to be signed by each pier owner which would restrict activities within the "public trust easement" (6223' - 6228.75' elevation) to protect the habitat of the Rorippa. Under the terms of this agreement, any activities which would physically disturb Rorippa habitat would not occur until they were reviewed and approved by the Commission. A copy of this agreement is attached as Exhibit "D".

3. PERMIT APPLICATIONS FOR FACILITIES IN TRESPASS

Staff counsel, in concert with the Office of the Attorney General's Office, have determined that it is inappropriate to apply the Class 1, Existing Facilities, categorical exemption to facilities the Commission has never considered before. Therefore, staff will evaluate each case to determine if another categorical exemption is appropriate. If none is, staff will prepare 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.

As in the case of renewals of "existing facilities" which are already under lease, the permit term for facilities previously in trespass will be for a period of five (5) years. Such permits would also incorporate the "Rorippa habitat" agreement described above.

4) EXTENSIONS, MODIFICATIONS TO EXISTING PIERS AFFECTING LAKE BELOW 6223 FOOT ELEVATION

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" under the CEQA or, because of its circumstances, requires the preparation of an initial study.

As stated above, the conduct of an initial study will provide the information necessary for staff to determine if the project qualifies for a "Negative Declaration". Again, the applicant will pay for such analyses as detailed above. Such permits would also incorporate the "Rorippa habitat" agreement.

5) NEW CONSTRUCTION, RECONSTRUCTION, WITH OR WITHOUT MODIFICATIONS, OF PIERS AFFECTING SHOREZONE ABOVE AND BELOW THE 6223 FOOT ELEVATION

Two major alternatives have been studied for the processing of these applications: 1) the preparation of a "program EIR" which would encompass all relevant projects in the Tahoe Basin; or 2) the development of a Rorippa enhancement plan which would seek to actively restore habitat, raise seedlings, plant and/or transplant seedlings or mature Rorippa in the lake's shorezone, and monitor and maintain such plants. Following discussion with the individuals and organizations listed in Exhibits "B" and "C", it was agreed that the preparation of the enhancement plan would provide more immediate and long range benefits to and protection for the endangered species.

As proposed, the enhancement plan would be prepared by an academic institution under the provisions of an interagency agreement with the Commission. Funds for the development of the plan would come from affected applications currently on file. The interests listed in Exhibits "B" and "C" would review and comment on the plan during its preparation and prior to its acceptance by the Commission.

Since the result of the plan would be the improvement of habitat for and the propagation of an endangered species, projects of applicants choosing to participate in and support the plan could be processed with the preparation of an initial study and subsequent "Negative Declaration" as the project's potential for significant adverse impact(s) to Rorippa will have been eliminated. The projects of those applicants who choose not to support the plan would be subject to the preparation of a site specific EIR unless a determination was made by the Department of Fish and Game that a project posed "No Jeopardy" to the affected species.

Staff believes that the proposed enhancement plan can be completed such that the Commission could allow the construction of such facilities during the construction period for fish habitat areas established by TRPA and the Department of Fish and Game at Lake Tahoe (July 1 - October 15) during 1990. Facilities proposed for non-designated areas can be constructed year round.

Staff from the Commission and from TRPA have also 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 Commission's initial action on piers 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 all applicable 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.
B. Tahoe Rorippa Mailing List.
C. Tahoe Agent List.
D. Rorippa Habitat Agreement.

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, AS DESCRIBED HEREIN, 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 COORDINATE THE DEVELOPMENT OF A RORIPPA ENHANCEMENT PLAN, IN CONJUNCTION WITH THE PARTIES LISTED IN EXHIBITS "B" AND "C", WHICH WILL ACTIVELY RESTORE HABITAT, RAISE SEEDLINGS, PLANT AND/OR TRANSPLANT SEEDLINGS OR MATURE RORIPPA WITHIN THE SHOREZONE AT LAKE TAHOE, AND MONITOR AND MAINTAIN SUCH PLANTS.

4. 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.

5. 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.

6. 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.

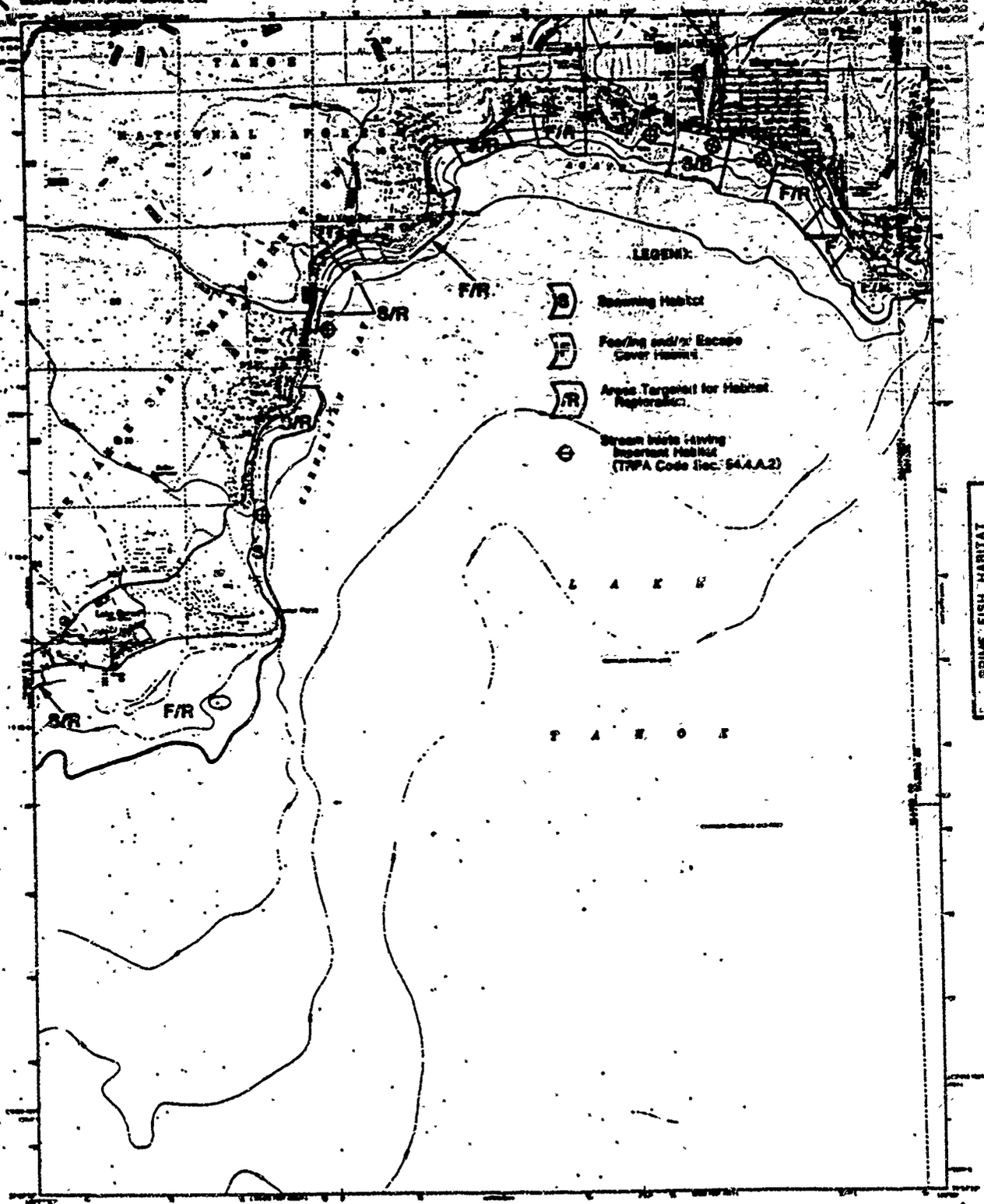
7. DIRECT STAFF TO EVALUATE THIS ACTION PERIODICALLY TO ENSURE THAT IT REPRESENTS ACCURATELY THE PROGRAMS AND POLICIES OF THE TRPA AND OTHER AGENCIES AFFECTING LAKE TAHOE AND TO RESUBMIT SUCH ACTION TO THE COMMISSION FOR AMENDMENT WHEN APPROPRIATE.

8. AUTHORIZE STAFF TO REDUCE THE TERM FOR ALL PERMITS ISSUED HEREAFTER FOR PROPOSED, EXISTING AND MODIFIED PIERS, INCLUDING REPAIRS, RECONSTRUCTION, AND EXTENSIONS, FROM TEN (10) YEARS TO FIVE (5) YEARS AND TO INCORPORATE THE PROVISIONS OF THE RORIPPA HABITAT AGREEMENT, AS CONTAINED IN EXHIBIT D, INTO SAID PERMITS.

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

REVISED (7/7/89

EXHIBIT "A"



KINGS BEACH, CALIF.-NEV.

F.S. NO. 538-1C

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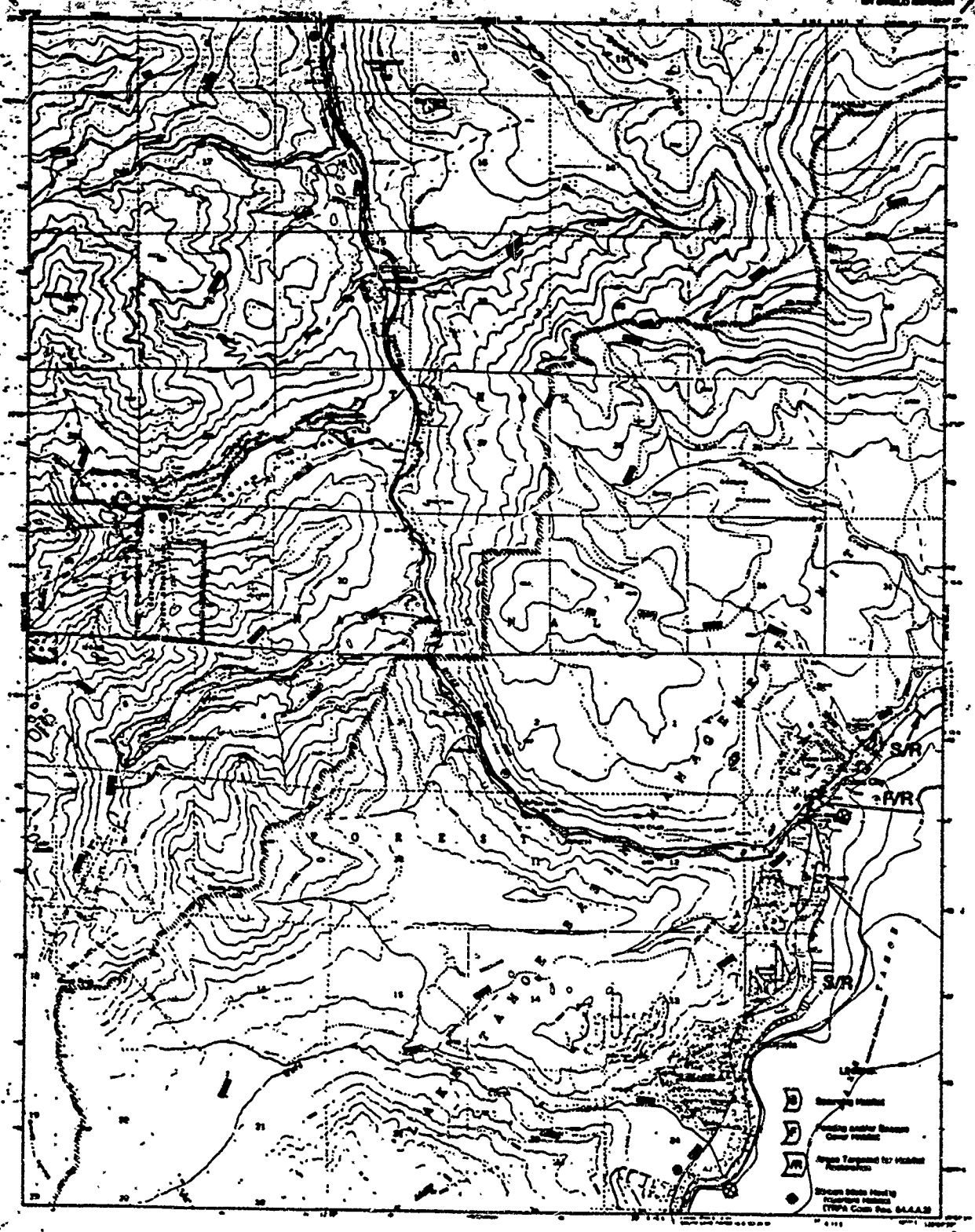

TAHOE CITY, CALIFORNIA

F. S. NO. 538-2C

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EXHIBIT "A"

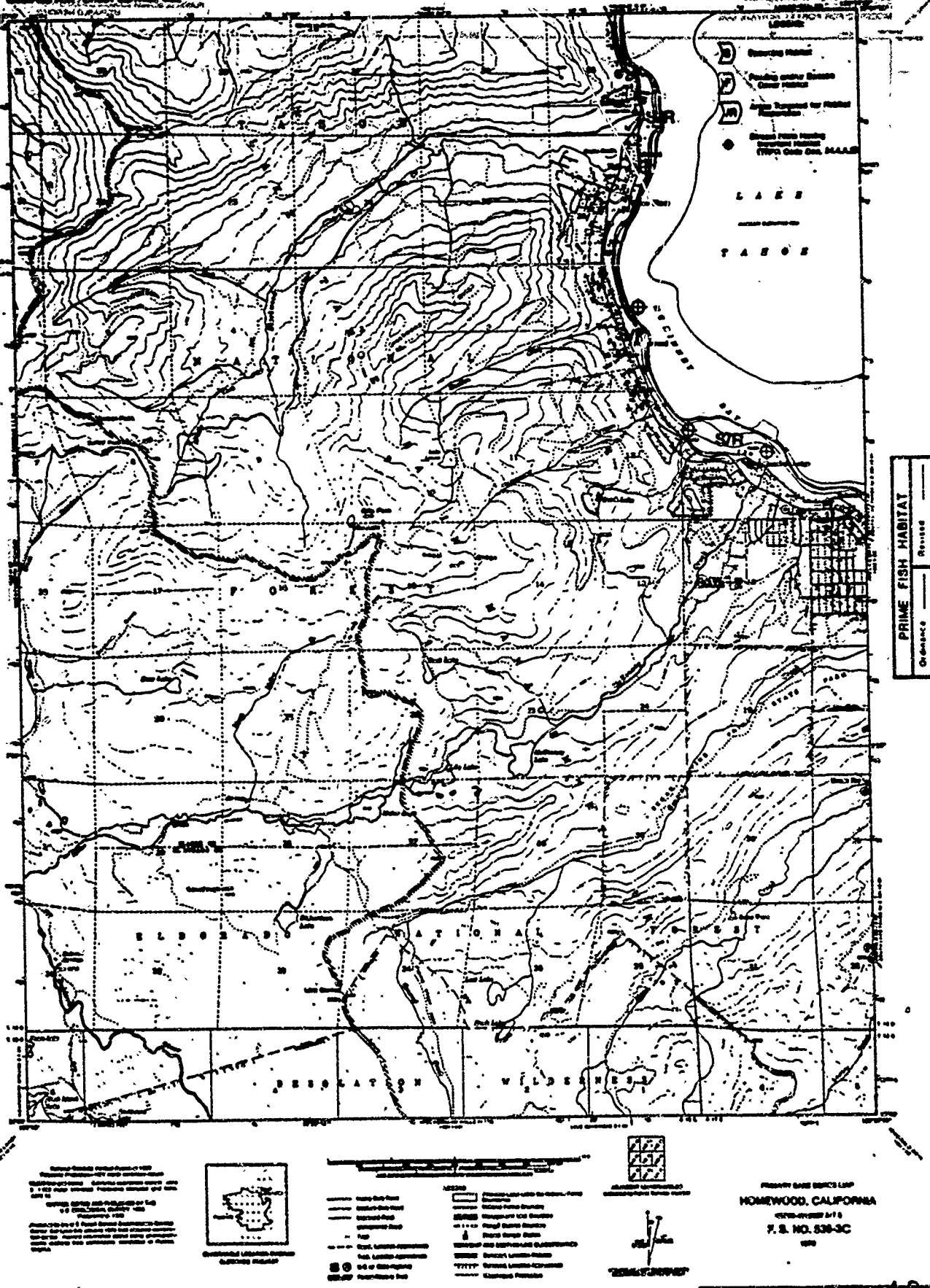

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EXHIBIT "A"

W 30005

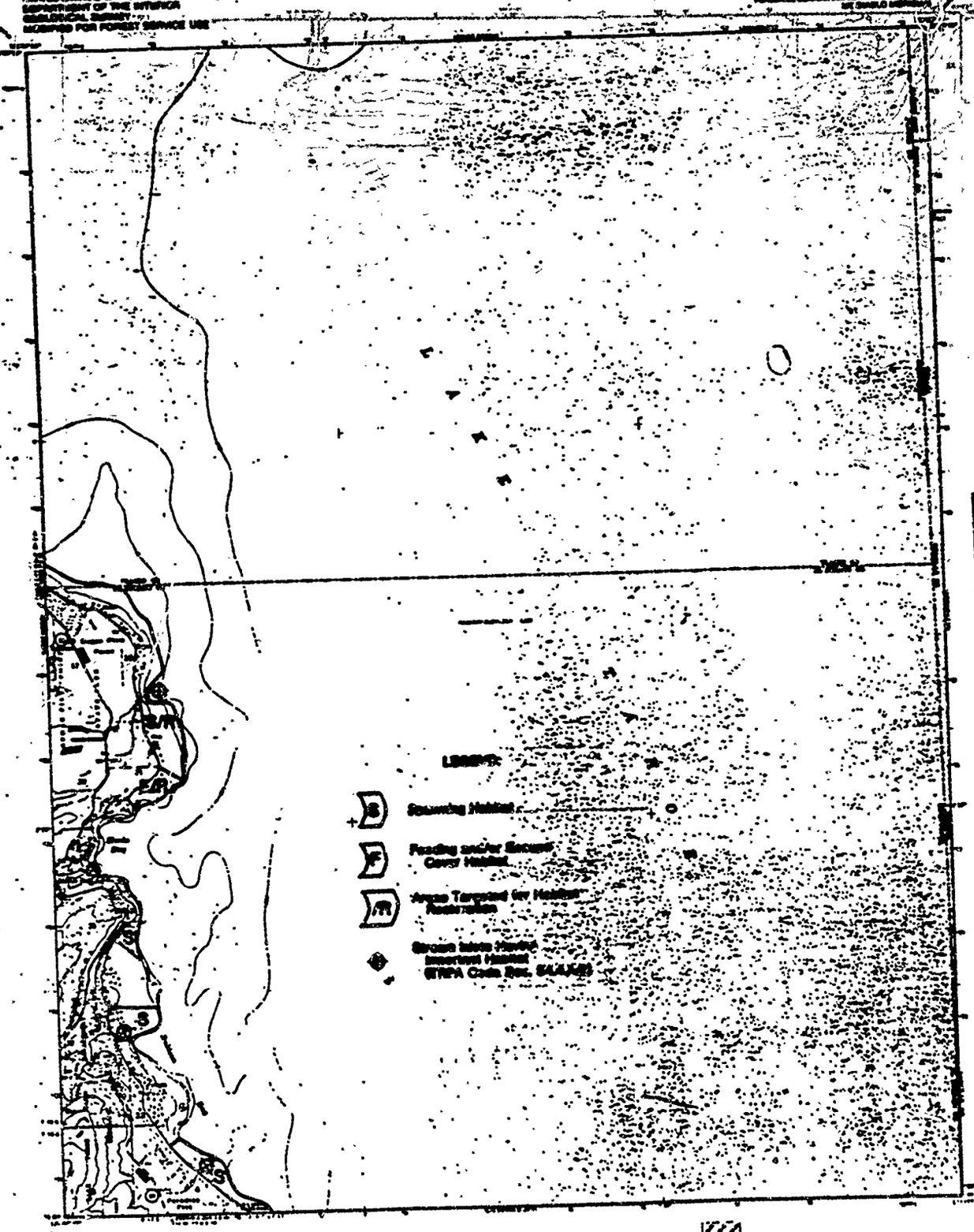

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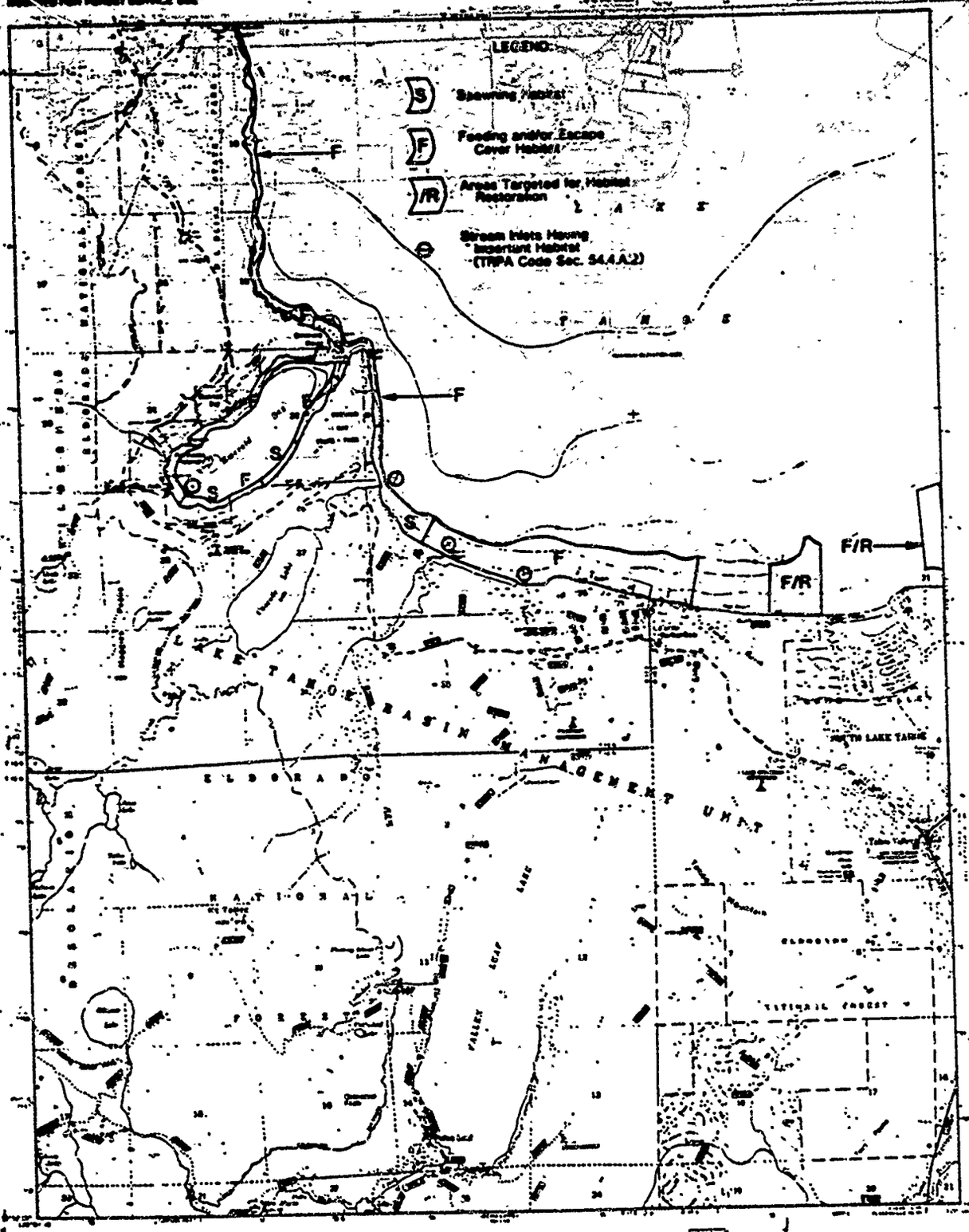
EXHIBIT "A"

W 30005



EMERALD BAY, CALIFORNIA

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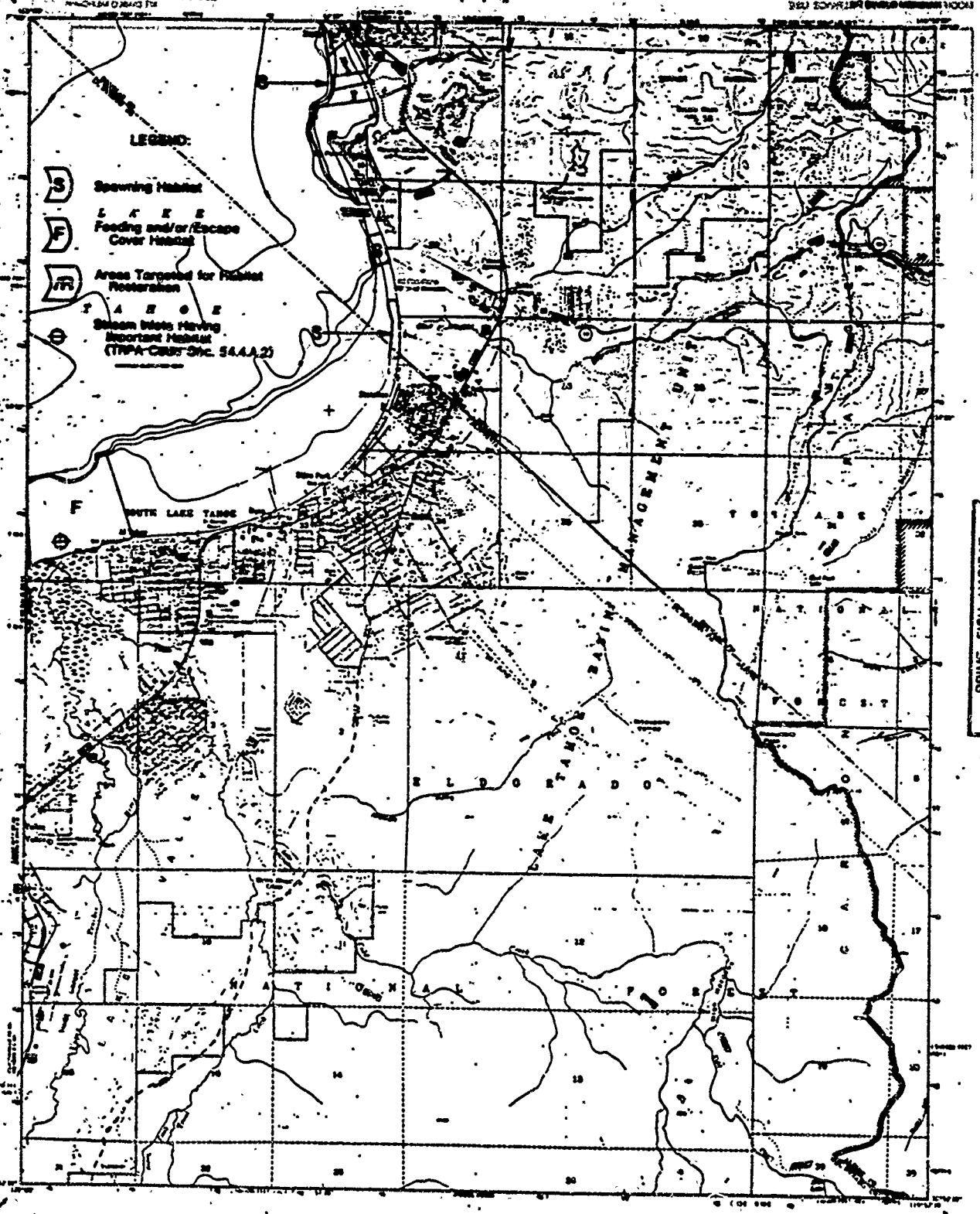

SOUTH LAKE TAHOE, CALIF.-NEV.

F.S. NO. 522-2C

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EXHIBIT "B"

TAHOE RORIPPA MAILING LIST

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(05/03/89 - RORI)

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EXHIBIT "C"

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Hoffman, Lien, Faccinto and Spitzer
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Brisco Enterprises
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Tahoe City, CA 95730

Gary R. Taylor
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Dena Ewing-Stratford and Associates
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(Michael Babcock)
Sarah J. Dille, Consultant
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(Lake Tahoe Park Association)
c/o Richard Wilson
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EXHIBIT D
RORIPPA HABITAT AGREEMENT

Permittee recognizes that the portion of his/her property which is subject to the public trust, as defined by Paragraph 13 of this permit, consists of natural habitat for **Rorippa Subumbellata** (commonly known as Tahoe Yellow Cress and hereinafter known as "Rorippa"), which is listed as an endangered species by the Fish and Game Commission of California.

Permittee agrees, that in order to protect the public trust values of this portion of his/her property, including Rorippa and its habitat, to retain said portion of his/her property, other than the improvements expressly authorized by this permit, in its natural condition and to prevent any physical disturbance of that portion of the property that will significantly impair or interfere with the natural values (specifically, Rorippa and Rorippa habitat) located thereon.

Permittee shall notify the State in writing at least 30 days prior to the commencement of any activity below elevation 6228.75 L.T.D. The State shall have the right to enter upon the property at reasonable times in order to monitor permittee's compliance with and otherwise enforce the terms of this permit, provided that such entry shall be upon prior reasonable notice to the permittee.

Permittee may be required to replace or restore any Rorippa or its habitat which is damaged as a result of activities on that portion of the applicant's property which is subject to the public trust.

ADDED (7/7/89)