

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0215R

RESOLUTION APPROVING A DONATION AGREEMENT WITH THE
NATURE CONSERVANCY ACCEPTING LAND IN THE UPPER
SMITHVILLE AREA AT NO COST

CITY PROPOSAL:

WHEREAS, the Nature Conservancy has acquired land on the City's behalf for inclusion into the Duluth Natural Areas Program, and

WHEREAS, the Nature Conservancy has successfully taken all steps necessary and has now acquired the final 5.49 acres of land for inclusion in said Natural Areas Program, now therefore

BE IT RESOLVED, that the proper city officials are authorized to enter into a donation agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____ with the Nature Conservancy accepting land in the upper Smithville area at no cost and further expressing appreciation to said Nature Conservancy for said land donation.

Approved:



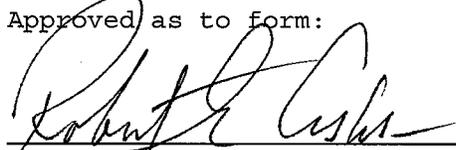
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

STATEMENT OF PURPOSE: This resolution authorizes the execution of a donation agreement with the Nature Conservancy necessary to acceptance for land in the upper Smithville area.

This 5.49 acre parcel of land was acquired on behalf of the City for inclusion into the Duluth Natural Areas Program, specifically for Magney-Snively. Previous land parcels have already been accepted with this being the last remaining parcel to be accepted.

The Parks and Recreation Commission approved accepting this property at the meeting of July 13, 2011.

DONATION AGREEMENT

This is an agreement for the sale and donation of real property between The Nature Conservancy, a non-profit corporation of the District of Columbia (**the Conservancy**) and The City of Duluth, Minnesota (**the Donee**) whose address is The City of Duluth, 411 West First Street, Duluth, MN 55802 covering that land, together with all structures and improvements located in and on the land, if any, located in St. Louis County, Minnesota, containing 5.49 acres, more or less, which is legally described in Exhibit A attached to this agreement (**Property**).

WITNESSETH:

In consideration of \$1.00 hereby paid by the Donee to the Conservancy ("Earnest Money") and of the agreements contained herein, the Conservancy agrees to donate to the Donee and the Donee agrees to accept the donation from the Conservancy of the property described in Exhibit A under the following terms and conditions:

1. **EXPENSE REIMBURSEMENT.** The Conservancy intends this to be a donation with no recovery of costs from the City of Duluth. Any real estate taxes assessed against the Property and payable in the year of closing, including any taxes for 2011 which are payable in 2012, together with any special assessments attributable to the period of Conservancy ownership will be paid by the Conservancy.
2. **CLOSING DATE.** Closing will be on June 15, 2012, or as soon thereafter as the conditions for closing set out in this agreement have been met. Closing may be held in escrow through an agent designated by the Conservancy or as otherwise agreed to by the parties.
3. **GRANT OBLIGATIONS.** The property was purchased with proceeds of the Minnesota Environment and Natural Resources Trust Fund for the purpose of long term protection of fragmented landscape corridors that connect areas of quality habitat to sustain fish, wildlife and plants. Donee is responsible for compliance with the requirements of Minnesota Statutes Chapter 116P and in particular Section 116P.15 which provides in part, "(a) An interest in real property acquired with an appropriation from the trust fund or the Minnesota future resources fund must be used in perpetuity or for the specific term of an easement interest for the purpose for which the appropriation was made. (b) A recipient of funding who acquires an interest in real property subject to this section may not alter the intended use of such interest in real property or convey any interest in the real property without the prior review and approval of the commission."
4. **EVIDENCE OF TITLE.** Upon execution of this agreement by both parties, the Donee may obtain a preliminary title insurance commitment on the Property. The Donee will be allowed 10 days after receipt of the commitment for title insurance to examine the commitment and make any objections to title. Any objections to title shall be in writing and delivered to the Conservancy or shall be deemed waived. The cost of the title examination, title insurance commitment and the final policy in the amount of the donation price to be issued at closing shall be the responsibility of the Donee.

The Nature Conservancy has provided a copy of its Ticor Title Insurance Policy of Title Insurance number 74106-136658, dated August 4, 2004 to the Donee. There have been no claims against this title insurance policy for any title defects.

5. TITLE. At closing, the Conservancy will convey good, insurable and marketable title to the Property, subject only to rights, reservations, restrictions or easements of record, including a requirement that the Property continue to be used for the purposes of the LCMR Grant Agreement between the State of Minnesota, acting by and through its Commissioner of Natural Resources and The Nature Conservancy, dated November 6, 2001.

6. TITLE DEFECTS. If for any reason the Conservancy cannot deliver title at closing as required by this agreement, the Donee may elect to: a) accept the Property with title as it is, b) refuse to accept the Property in which case the Earnest Money paid for this agreement shall be refunded.

7. DOCUMENTS FOR CLOSING. The Conservancy shall execute and deliver at closing a general warranty deed in the form attached as Exhibit B, an owner's affidavit and/or other documents required by the title insurance company to remove the standard title policy exceptions for parties in possession and liens for labor or materials, and any other documents necessary to close in accordance with the terms of this agreement.

The proposed deed and any other documents to be prepared by the Conservancy for closing must be submitted to the Donee at least 5 days before closing. Any documents to be prepared by the Donee shall be provided to the Conservancy at least 5 days before closing.

The City of Duluth shall be responsible for recording the deed and providing a copy of the recorded deed to The Conservancy.

8. PROPERTY TAXES. Any delinquent real property taxes are the Conservancy's responsibility and should be satisfied of record by the Conservancy at or before closing, if possible. Any real estate taxes assessed against the Property attributable to the period of Conservancy ownership, including any taxes for 2012 which are payable in 2013, together with any special assessments payable therewith, will be paid by the Conservancy.

9. MISCELLANEOUS CLOSING EXPENSES. The Donee will pay any recording fees and any real estate transfer fee or tax or any similar charge due upon conveyance of title to the Donee.

10. POSSESSION. The Conservancy will deliver full possession of the Property to the Donee at closing.

11. SIGNAGE. At such time as the Donee updates or installs new signs at Magney Snively Natural Area, the signs shall include an acknowledgement of The Nature Conservancy's role in protecting the Magney Snively Natural Area.

12. **CONDITION OF PROPERTY/RISK OF LOSS.** The Conservancy shall not transfer or encumber any interest in the Property prior to closing. The Conservancy shall keep the Property in its current condition until closing.

In the event of any actions or adverse change in the condition of the Property, the Donee may elect to: a) refuse to accept the Property, in which case the Earnest Money shall be refunded, or b) accept the Property, or a portion thereof, in which case there may be an equitable adjustment of the Expense Reimbursement based on the change in circumstances.

13. **RIGHT OF ENTRY AND INSPECTION.** The Donee and its agents shall have the right to enter upon the Property at reasonable times for surveying, conducting an environmental inspection and assessment to detect hazardous or toxic substances. Based upon the results of the environmental inspection and assessment and other inspections, the Donee may elect to refuse to accept the Property, in which case the Earnest Money shall be promptly refunded. Donee shall indemnify and hold the Conservancy harmless from any claims and liability that may arise from Donee's entry upon the Property prior to closing.

14. **NON-FOREIGN STATUS.** To inform the Donee that withholding of tax is not required under Section 1445 of the Internal Revenue Code and under penalties of perjury, the Conservancy hereby certifies that the Conservancy is not a non-resident alien or a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined for purposes of federal income tax law and that the Conservancy's federal taxpayer identification number is as set out below. The Conservancy understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made could be punished by fines, imprisonment or both.

15. **REPRESENTATION BY COUNSEL.** Donee acknowledges that the Conservancy has advised Donee to have Donee's attorney review this agreement and all attached exhibits, and that the Conservancy is not acting on behalf of, or advising Donee in this transaction and Donee has not relied on any information or advice provided by Conservancy or its agents.

16. **REMEDIES.** If the Conservancy is ready, willing and able to perform under the terms of this agreement but the Donee refuses to perform by paying the remaining monies due, the Conservancy shall be entitled to retain the monies already paid as Earnest Money for this agreement as liquidated damages, the parties recognizing that this amount represents a fair estimate of damages for the breach of a contract of this nature and that damages are otherwise difficult to ascertain. If the Conservancy breaches any of the terms or conditions of this agreement, the Donee shall be entitled to an immediate refund of all monies paid under this agreement.

17. **EXHIBITS.** The following exhibits are attached hereto and incorporated by reference herein: Exhibit A – Legal Description; Exhibit B – Warranty Deed.

18. **NOTICE.** Any notice required by this agreement shall be sent to the Donee at the address set out above and to the Conservancy at the Midwestern Resource Office, 1101 West

River Parkway, Suite 200, Minneapolis, Minnesota 55415, attn: Legal Department, or to such other addresses as the parties may designate in writing from time to time hereafter.

19. **BINDING EFFECT.** This agreement becomes effective when last signed by all of the parties and shall then apply to and bind each of the parties and their heirs, executors, administrators, successors, and assigns.

20. **COMPLETE AGREEMENT.** This instrument constitutes the sole and complete agreement between the parties and cannot be changed except by written amendment. No representation or promise not included in this instrument or any written amendment shall be binding upon the parties.

21. **CONSERVANCY DISCLOSURES.** The Conservancy holds a limited real estate broker's license issued by the State of Minnesota.

CITY OF DULUTH

THE NATURE CONSERVANCY:

By: _____

By: _____

Title: Mayor

Margaret Ladner
Title: State Director for MN, ND & SD

Date: _____

Date: _____

Federal Taxpayer Identification No.
53-0242652

By: _____

Title: City Clerk

Date: _____

By: _____

Title: City Auditor

Date: _____

Approved as to form:

By: _____

Title: City Attorney

Date: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

That part of the South Half of the North Half of the Northeast Quarter (S ½ of N ½ of NE ¼), of Section Twenty-seven (27), in Township Forty-nine (49), North Range Fifteen (15), West of the 4th Principal Meridian, lying easterly of the right-of-way of the DW&P Railway and also excepting the right-of-way of the NP Railway Co., Also Excepting the East 145 feet of the South Half of North Half of Northeast Quarter (S ½ of N ½ of NE ¼) of Section Twenty-seven (27), in Township Forty-nine (49), North of Range Fifteen.

EXHIBIT B - WARRANTY DEED

No delinquent taxes and transfer entered; Certificate of Real Estate Value () filed () not required
 Certificate of Real Estate Value No. _____
 _____, 20____

 _____ County Auditor
 By _____ Deputy

(reserved for recording data)

STATE DEED TAX DUE HEREON: \$_____

Date _____, 2012

FOR VALUABLE CONSIDERATION, The Nature Conservancy, a non-profit corporation under the laws of the District of Columbia, Grantor, hereby conveys and warrants to the City of Duluth, a municipal corporation, Grantee, real property in St. Louis County, Minnesota, described as follows:

That part of the South Half of the North Half of the Northeast Quarter (S 1/2 N 1/2 NE 1/4) of Section Twenty-seven (27) in Township Forty-nine (49) North of Range Fifteen (15) West of the Fourth Principal Meridian, lying easterly of the right-of-way of the DW&P Railway and also excepting the right-of-way of the NP Railway Co. ALSO EXCEPTING the East 145 feet of the South Half of the North Half of the Northeast Quarter of Section 27, Township 49 North, Range 15 West,

together with all hereditaments and appurtenances belonging thereto, and subject to the Notice of Funding Restrictions dated November 12, 2004 and filed of record on March 1, 2005 as document number 793882, in the office of the Registrar of Titles in and for the County of St. Louis, Minnesota, which provides, in part, that the City of Duluth's interest in the Property, or any portion of the City of Duluth's interest in the Property, may not be sold, transferred, pledged, or otherwise disposed of or further encumbered without obtaining the prior written approval of the Legislative Commission on Minnesota Resources, or its successor.

- Check box if applicable:
- The Seller certifies that the seller does not know of any wells on the described real property.
 - A well disclosure certificate accompanies this document
 - I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

THE NATURE CONSERVANCY

By: _____
Margaret Ladner

Its: State Director

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing was acknowledged before me this _____ day of _____, 2012 by Margaret Ladner, the State Director of The Nature Conservancy, a non-profit corporation under the laws of the District of Columbia, on behalf of the non-profit corporation.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

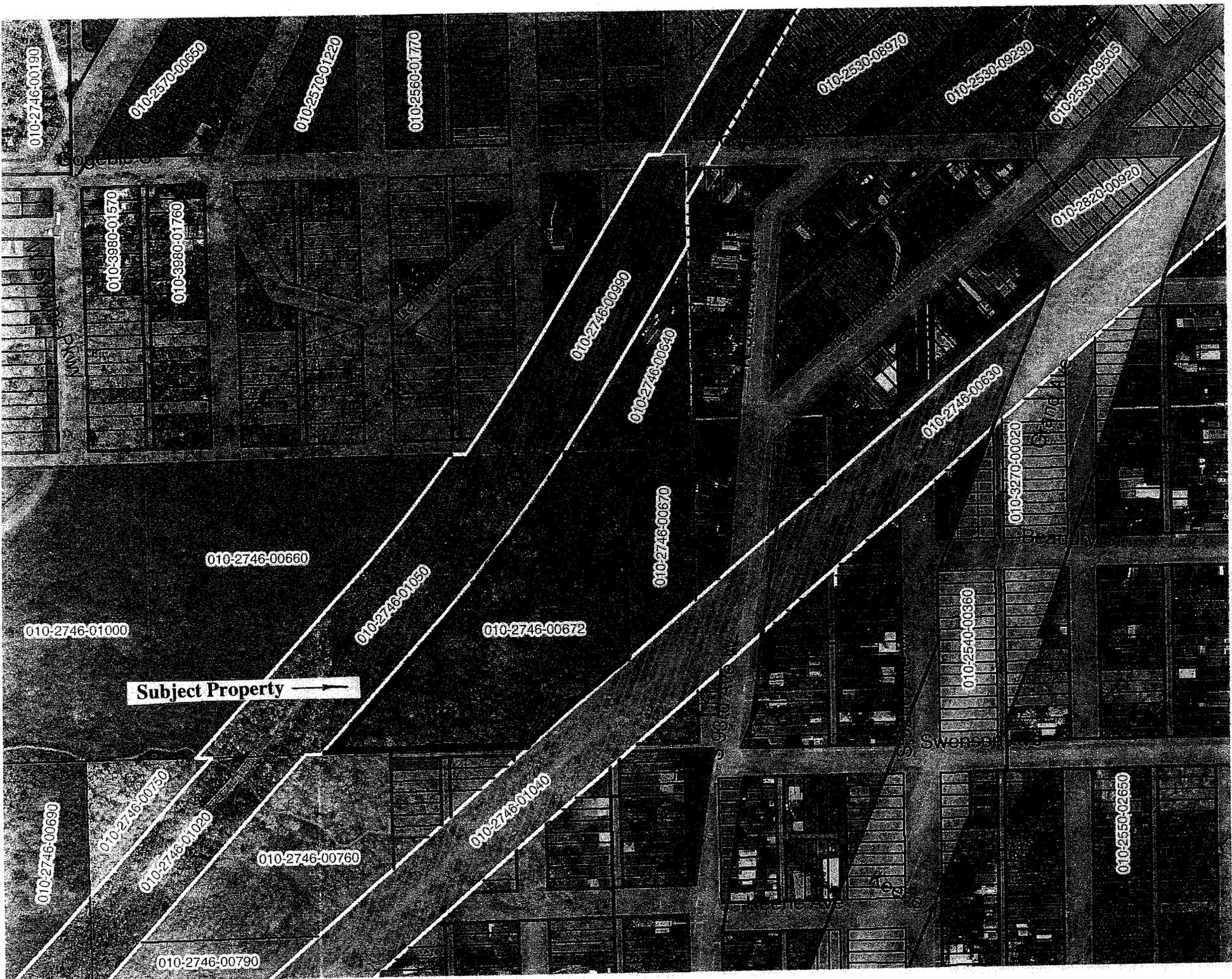
SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT

Tax Statements for the real property described in this instrument should be sent to (include name and address of Grantee):

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS)

The Nature Conservancy
1101 West River Parkway, Suite 200
Minneapolis, MN 55415

City of Duluth



010-2746-00190

010-2570-00650

010-2570-01220

010-2560-01770

010-2530-08970

010-2530-08280

010-2530-08505

010-3980-01570

010-3980-01760

010-2746-00990

010-2746-00640

010-2520-00920

010-2746-00660

010-2746-01050

010-2746-00670

010-2746-00630

010-3270-00020

010-2746-01000

010-2746-00672

Subject Property →

010-2540-00360

010-2746-00690

010-2746-00750

010-2746-01020

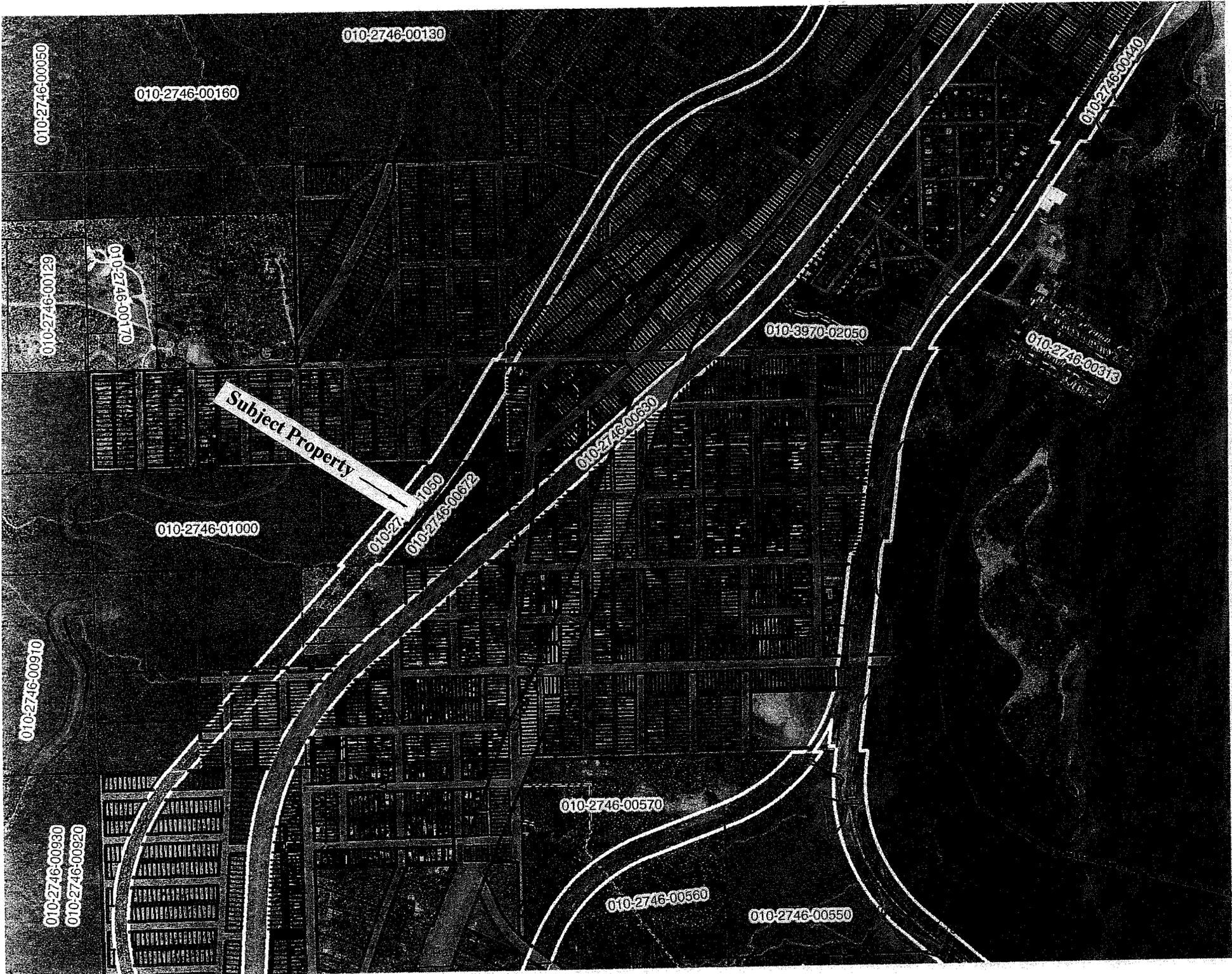
010-2746-00760

010-2746-01040

Swensson St

010-2550-02650

010-2746-00790



010-2746-00130

010-2746-00050

010-2746-00160

010-2746-00129

010-2746-00170

Subject Property

010-2746-01000

010-2746-00910

010-2746-00920

010-2746-00910

010-2746-00930

010-2746-00920

010-2746-00570

010-2746-00560

010-2746-00550

010-3970-02050

010-2746-00330

010-2746-00313

010-2746-00440