



MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF CORRECTED DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

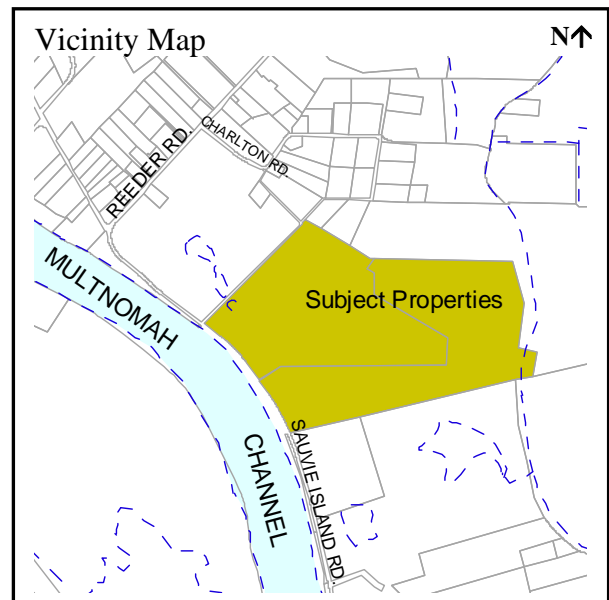
Case File: T2-07-017

Permit: Property Line Adjustment and
Non-Conforming Use Verification

Location: 13741, 13743 and 13745 NW Charlton
Tax Lot 1800, Township 2 North, Range
1 West, W.M. and Tax Lot 1000, Section
16 Township 2 North,
Range 1 West, W.M.

Applicant: Dennis Grande

Owner: Dennis E. Grande TR &
Nancy L. Grande TR
13743 NW Charlton Rd.
Portland, OR 97231



Summary: Property line adjustment trading equal areas between the above cited properties and nonconforming use verification for a dwelling.

Decision: Approved with conditions.

Unless appealed, this decision is effective August 23, 2007, at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Thursday, August 9, 2007

Opportunity to Review the Record: A copy of the Planning Director's decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact George A. Plummer, Staff Planner at 503-988-3043 ext 29152.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is August 23, 2007 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37, MCC 34.2600 et. al: Exclusive Farm Use, MCC 34.7215: Nonconforming Uses and 34.7790 Property Line Adjustment. Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse>.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires two years from the date the decision is final if; the final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 or 37.0700, as applicable. A request for permit extension may be required to be granted prior to the expiration date of the permit.**

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in brackets.

1. This approval is based on submitted materials. The proposed property line adjustment shall be completed as shown and described in the application materials submitted by the applicant and as shown on Exhibit 1.2 [MCC 37.0580]. No additional lot or parcel shall be created through this process [MCC 34.7790(A)].
2. The applicant shall complete the procedures provided in the attached "Applicant's Instructions for Finishing a Property Line Adjustment," included as Exhibit 2.4 and in the attached "Surveyor's Instructions for Finishing a Property Line Adjustment" included as Exhibit 2.5.

3. Prior to recording the deeds, the property owner, or representative thereof, shall submit copies of the final survey, and legal descriptions to Multnomah County Planning for verification that the adjusted properties conform to the approved Tentative Plan Map. If the submitted documents conform with the approved Tentative Plan Map (Exhibit 1.2) and zoning requirements staff will sign the survey and deeds. Multnomah County Planning must review and sign the survey before you submit your deed(s), surveys, and legal descriptions to County Records Management office at Assessment and Taxation and County Surveying for recording [MCC 34.7790].
4. For each of the two properties, a new deed shall be filed with County Records describing the property boundaries with a metes-and-bounds description. No additional lot or parcel shall be created. [MCC 34.7790].
5. The property line adjustment shall be result in an equal area exchange with both properties remaining the same area as the existing properties [MCC 34.2670(A)(3)].

Note: The Planning Director's policy is for the case planner to provide zoning approval of the final Plan on an appointment basis. Please contact George Plummer at 503-988-3043 extension 29152 to set a time for zoning approval.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Note: To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. At the end of the report, Exhibits are described.

1. **REQUEST FOR A PROPERTY LINE ADJUSTMENT AND NON-CONFORMING USE VERIFICATION**

Staff: The request is for a proposed property line adjustment with an equal exchange of land between 70.84 acre Tax Lot 1000 and 75.88 acre Tax Lot 1800. Existing Tax Lot 1000 is developed with two single family dwellings established in 1903 and 1983 (Exhibit 2.1 and 2.1(a)). Tax Lot 1000 will be reconfigured as Tract II shown on the tentative plan map included as Exhibit 1.2 with the 1903 dwelling remaining on the property. Existing Tax Lot 1800 has a single family dwelling from 1942 (Exhibit 2.1 and 2.1(b)) . Tax Lot 1800 will be reconfigured as Tract I shown on the tentative plan map included as Exhibit 1.2 with the 1983 dwelling on the reconfigured property along with the 1942 dwelling. A Non-Conforming Use Verification request for 1942 to verify the dwelling has continued as a use established prior to the establishment of zoning. Both properties are in the Exclusive Farm Use Zone District (Exhibit 2.2). The properties are accessed from Charlton Road and from Sauvie Island Road (Exhibit 1.2).

2. **SITE DESCRIPTION**

Staff: Existing Tax Lot 1000 is developed with two single family dwellings established in 1903 and 1983. Existing Tax Lot 1800 has a single family dwelling from 1942 which was moved to the property in 1946. Tax Lot 1000 is 70.84 acres and Tax Lot 1800 is 75.88 acres. Both properties are currently farmed and will continue to be farmed. The southwestern half of the farm is cultivated with produce crops and the northeastern half grows landscape crops. There is an existing farm stand which markets produce grown on the farm located on Tax Lot 1800 which will be located on proposed Tract II when the property line adjustment is completed.

3. **TYPE II CASE PROCEDURES**

MCC 37.0530 (B): Type II decisions involve the exercise of some interpretation and discretion in evaluating approval criteria. Applications evaluated through this process are assumed to be allowable in the underlying zone. County Review typically focuses on what form the use will take, where it will be located in relation to other uses and natural features and resources, and how it will look. However, an application shall not be approved unless it is consistent with the applicable siting standards and in compliance with approval requirements. Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision. The Planning Director's decision is appealable to the Hearings Officer. If no appeal is filed the Planning Director's decision shall become final at the close of business on the 14th day after the date on the decision. If an appeal is received, the Hearings Officer decision is the County's final decision and is appealable to the Land Use Board of Appeals (LUBA) within 21 days of when the signed Hearings Officer decision is mailed pursuant to 37.0660(D).

Staff: Procedures outlined in MCC 37.0530 were followed in processing this case. An opportunity to appeal this case will be provided. If no appeal is filed, the decision will become final 14 days after the date on the decision. The application was submitted February 2, 2007 for the property line adjustment and an application was submitted for nonconforming use verification on April 10, 2007. These two application were combined into one case which was deemed complete on May 29, 2007 when additional information was submitted.

An “Opportunity to Comment” notice was mailed on June 4, 2007 to all owners of property within 750 feet of the subject site. They were given a 14-day period to provide comments on the application (MCC Chapter 37). No comments were submitted.

4. CODE COMPLIANCE AND APPLICATIONS

MCC 37.0560: Except as provided in subsection (A), the County shall not make a land use decision or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

Finding: It has been determined that there are code compliance violations on Tax Lot 1800 which consist of two trailers, a septic system and electrical connections without the required permits. The property owner has signed a Voluntary Compliance Agreement (UR-07-019) on May 29, 2007 agreeing to resolve these violations.

5. EXCLUSIVE FARM ZONE DISTRICT

5.1. Dimensional Standards

MCC 34.2660 (C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Minimum Front Lot Line Length - 50 feet.

Staff: The required minimum yard dimensions will be met for all structures measured from the adjusted property line on the subject properties (Exhibit 1.2). The proposed property line results in Tract I will becoming a flag lot with the minimum front lot line exceeding the 50 foot minimum length requirement. The proposed property line results in a front lot line for Tract II exceeding the 50 foot minimum length requirement. These standards are met.

5.2. Access

MCC 34.2690: All lots and parcels in this district shall abut a street, or shall have other

access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 34.2675(C).

Staff: Both proposed tracts will abut Charlton Drive (Exhibit 1.2). This standard is met.

5.3. EFU Lot of Record

MCC 34.2675 (A) In addition to the Lot of Record definition standards in MCC 34.0005, for the purposes of this district a Lot of Record is either:

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or
- (2) A group of contiguous parcels or lots:
 - (a) Which were held under the *same ownership* on February 20, 1990; and
 - (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

Staff: Both existing properties (Tax Lots 1000 and 1800) meet the standards in MCC 34.0005 as demonstrated in the finding in Section 6 of this decision (Exhibit 2.1). Both properties are greater than 19 acres thus are each a Lot of Record.

5.4 EFU Property Line Adjustment

MCC 34.2670(A) Pursuant to the applicable provisions in MCC 34.7790, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:

5.4.1. MCC 34.2670(A)(1) All dwellings that were situated on the same lot prior to the adjustments must re-main together on the reconfigured lot; and

Staff: Tax Lot 1800 has a dwelling which was built in 1942 and moved to the property in 1946 which is inhabited by farm help. Permit PRE 12-81 designated the use of the dwelling as a farm help dwelling. A nonconforming use verification in Section 7 of this decision verifies that the 1942 dwelling was legally established when placed on the property in 1946 and has continued to be used as a dwelling for farm help.

Tax Lot 1000 has two existing dwellings on the property. A dwelling established in 1983 as the primary farm dwelling through Case PRE 12-81 is inhabited by the farm owners Mr. and Mrs. Grande. The other dwelling established in 1903 is inhabited by a farm lease operator, Don Kruger. The proposed property line adjustment will result in the dwelling, established in 1983, being located on Tract I along with the 1942 dwelling.

The 1903 dwelling, the only remaining dwelling on the proposed Tract II, will become the primary dwelling when that property is sold. Mr. Kruger has submitted an income statement demonstrating that the area he leases, which will make up proposed Tract II, produces more than \$300,000 in annual gross income from fruit and vegetable crops grown on this portion of the farm.

The intent of this code section is to prevent a parcel that had no dwelling on it prior to a property line adjustment ending up with a dwelling without going through the farm income

qualification process for a new dwelling. The intent is also to prevent a dwelling being transferred from a farmed parcel to a non-farmable parcel, leaving the farmed parcel without a dwelling. Both parcels have at least one dwelling prior to and after the property line adjustment. The property which is proposed to have two dwellings is large enough to be maintained as a farm parcel and will have a primary dwelling occupied by the owner. The 1942 dwelling will continue to be occupied by farm help. The use of the structures on these properties will not change as a result of the property line adjustment. Each of the dwellings will continue to be used in relationship to farming occurring on the properties. The intent of this code section is met by this proposal.

- 5.4.2. MCC 34.2670(A)(2) The following dimensional and access requirements are met:**
- (a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements; and**
 - (b) If the properties abut a street, the required access requirements of MCC 34.2690 are met after the relocation of the common property line; and**

Staff: The dimensional requirements will be met for the dwellings and structures on both tracts (Exhibit 1.2). Both tracts will continue to abut a public road meeting the access requirements. These standards are met.

- 5.4.3. MCC 34.2670(A)(3) The reconfigured lot areas will each:**
- (a) Be a minimum of 80 acres, or**
 - (b) Retain the same lot area that existed prior to the exchange.**

Staff: The proposal is for an equal area exchange between the two properties (Exhibit 1.2). A condition of this approval will require the equal exchange.

6. LOT OF RECORD

- 6.1. MCC 33.0005(L)(13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**
- (a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.**
 - (b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**
 - 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
 - 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
 - 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or**
 - 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
 - 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date**

of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

Staff: Both properties were created through a Land Division Case LD 4-81. The partition map was approved and signed by County Planning on June 02, 1981 (Exhibit 1.4), thus was found to meet the applicable land partitioning requirements in effect on or after October 19, 1978 and met zoning requirements when created. Both properties meet the requirements of MCC 33.0005(L)(13)(a) and (b)(4) and are lots of Record.

7. NONCONFORMING USE VERIFICATION

7.1. MCC 34.7200 (B) Nonconforming uses shall be allowed to continue without additional permission, except that such uses may be replaced, altered or expanded only as provided in MCC 34.7205 or 34.7210.

Staff: The findings below in this Section (7) of this decision verify that the existing 1942 dwelling on Tax Lot 1800 (R971160020) established on the property 1946 is a nonconforming use. These findings allow the dwelling to continue as a dwelling without additional permission.

7.2. MCC 34.7215(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:

- (1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and**
- (2) Has not been abandoned or interrupted for a continuous two year period.**

Staff: These findings are to verify that 1942 dwelling on Tax Lot 1800 has been occupied for many years as a farm help dwelling. The 1942 dwelling was moved to the property in 1946 prior to zoning requirements or building permit requirements, thus it was legally established. The dwelling has been used as a farm help dwelling. The applicant submitted a notarized affidavit from Javier Alvarez stating that he has lived and worked on the farm for ten years from 1989 through 1999 and that the dwelling was occupied during that time (Exhibit 1.6). Portland General Electric submitted a letter (Exhibit 1.7) indicating there have been two meters billed to the farm address since 2001. A meter was installed for the 1942 dwelling at that time to provide for separate billing. Mr. Grande showed staff the meter for that dwelling during a site visit. We find that the dwelling meets these requirements verifying it is a non-conforming dwelling.

7.3. MCC 34.7215 (B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:

- (1) Description of the use;**
- (2) The types and quantities of goods or services provided and activities conducted;**
- (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**
- (4) The number, location and size of physical improvements associated with the use;**
- (5) The amount of land devoted to the use; and**
- (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**

Staff: The 1942 dwelling (754 square foot) was determined to be a farm help dwelling as part of a farm plan under Case PRE 12-81. This dwelling became nonconforming on January 1, 1993 when Oregon Revised Statutes required an income test to replace a farm help dwelling. The dwelling continued to be used as a dwelling from when it was established to the current day. On April 5, 1997, the County's EFU zone was repealed and replaced with language in compliance with the 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876. Given this dwelling predated all zoning on the property it could be replaced through the nonconforming use code. Given the dwelling became nonconforming January 1, 1993; its use at that time was a farm help dwelling.

- 7.4. MCC 34.7215 (C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

Staff: The 1942 dwelling was determined to be a farm help dwelling as part of a farm plan under Case PRE 12-81. It is a single family dwelling.

- 7.5. MCC 34.7215(F) An applicant may prove the existence, continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application.**

Staff: These findings are to verify that the 1942 dwelling on Tax Lot 1800 has been occupied for many years as a farm help dwelling. The 1942 dwelling was established in 1946 when it was moved to the farm. The dwelling was established prior to zoning requirements or building permit requirements, thus it was legally established. The dwelling has been used as a farm help dwelling. The applicant submitted a notarized affidavit (Exhibit 1.6) from Javier Alvarez stating that he has lived and worked on the farm for ten years from 1989 through 1999 and that the dwelling was occupied during that time (Exhibit 1.6). Portland General Electric submitted a letter (Exhibit 1.7) indicating there have been two meters billed to the farm address since 2001. A meter was installed for the 1942 dwelling at that time to provide for separate billing. Mr. Grande showed staff the meter for that dwelling during a site visit. The applicant has also submitted two certificates for the dwelling of Labor Housing Registration from February 16, 2006 and November 7, 2006 (Exhibit 1.8). The applicant has shown that the dwelling has been occupied for the last ten years.

8. PROPERTY LINE ADJUSTMENT

MCC 34.7790: A property line adjustment is the relocation of a common property line between two abutting proper-ties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

- (A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**
- (B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**
- (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and**
- (D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.**

Staff: The proposed Property Line Adjustment is between two adjacent properties with no additional property created by the proposal (Exhibit 1.2). Both owners have signed the application form. Both properties meet the approval criteria for a property line adjustment as given in the underlying zoning district. The application was submitted for obtaining the approval of a property line adjustment as provided for by the Planning Director. Copies of the deed descriptions and the final map will need to be submitted for review and must be stamped to indicate the Planning Director's approval, before the property line is recorded. These procedures are outline in the Applicant's Instructions for Finishing a Property Line Adjustment," included as Exhibit 2.4 and in the attached "Surveyor's Instructions for Finishing a Property Line Adjustment" included as Exhibit 2.5. A condition of approval will require these procedures to be followed.

9. CONCLUSION

Considering the findings and other information contained herein, all the Multnomah County Code requirements are met or can be met through Conditions of Approval for the requested Property Line Adjustment.

10. EXHIBITS

10.1 Submitted by the Applicant

- Exhibit 1.1: Application form (2 pages)
- Exhibit 1.2: Proposed property line adjustment plan map (1 page)
- Exhibit 1.3: Narrative (4 page);
- Exhibit 1.4: Approved Partition Plat map for Case LD 4-81 (1 page)
- Exhibit 1.5: Don Kruger memo describing farming on proposed Tract II (3 pages)
- Exhibit 1.6: Affidavit signed by Javier Alvarez (1 page);
- Exhibit 1.7: Letter from PGE and memo from applicant clarifying PGE letter (2 pages)
- Exhibit 1.8: Certificates of Labor Housing Registration (2 pages)
- Exhibit 1.9: Certificate of On-Site Sewage Disposal (4 pages)
- Exhibit 1.10: Fire District Access Review (4 pages)
- Exhibit 1.11: Certification of Water Service (2 pages)

10.2 Supplied by County

- Exhibit 2.1: County Assessment Records for both properties (10 pages)
- Exhibit 2.2: County Zoning Map (1 page)
- Exhibit 2.3: 2002 Aerial Photo (1 page)
- Exhibit 2.4: Applicant's Instructions for Finishing a Property Line Adjustment (1 page)
- Exhibit 2.5: Surveyor's Instructions for Finishing a property line Adjustment (1 page)