

Kramer and Associates  
542 4<sup>th</sup> Avenue, Suite 207  
Fairbanks, Alaska 99701  
(907) 888-4098

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

PUMPKIN, LIMITED )  
)  
Plaintiff, )  
)  
v, )  
)  
UTILITY SERVICES OF ALASKA, INC., )  
d/b/a COLLEGE UTILITIES )  
CORPORATION )  
)  
Defendant. )  
)  
\_\_\_\_\_ )  
Case No. 4FA – 18 - \_\_\_\_\_ CI

FILED in the Trial Courts  
State of Alaska Fourth District

JUN 25 2018

By \_\_\_\_\_ Deputy

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

**GENERAL ALLEGATIONS**

1. At all times pertinent hereto, Pumpkin, Limited (hereinafter Roe) has been a Colorado corporation in good standing in the State of Colorado of which Jason Tyler McComas-Roe (Roe), known as Jason Roe, has been the sole shareholder and a resident of Fairbanks, Alaska in the Fourth Judicial District of Alaska.

2. At all times pertinent hereto, Utility Services of Alaska, Inc., d/b/a College Utilities Corporation (College Utilities) has been doing business in Fairbanks, Alaska.

3. Roe is the owner of Tract A, in the Twin Lakes subdivision, Phase 1, Plat 99-77 (Roe's property).

4. Commencing on July 3, 2018, College Utilities intends to enter Roe's property and use a hydro ax to clear a 33-foot-wide strip over 1,246 feet of Roe's property in order to install an underground water main to service lots to the west of Roe's property. See Exhibit A.

5. College Utilities claims to be legally allowed to enter and conduct activities on Roe's property because of a purported section line easement created by the Territory of Alaska via 19 SLA 1923 which accepted the federal grant offered in 43 U.S.C. Section 932 by dedicating 33 feet on each side of the section line.

6. On information and belief, it will cost College Utilities \$46 per linear foot (inclusive of pipe) plus clear cutting expense to install the underground water main on Roe's property. On information and belief the cost to College Utilities would be the same or less to install the water main on the west side of the alleged section line easement and it will cost College Utilities \$55 per linear foot (inclusive of pipe) with no land clearing expenses and no known additional expenses to make the same service-line connections over an alternative route along Helm Drive.

7. On information and belief, College Utilities is operating under a nationwide wetlands permit issued by the United States Army Corps of Engineers.

8. On information and belief, College Utilities initially planned to put its water line on Helm Drive but not to include that in its wetland permit.

9. On information and belief, if College Utilities were to conduct its activities on the adjacent side on the purported section line easement, College Utilities would not need a new permit, but rather could do so under its existing permit.

10. On information and belief, if College Utilities were to apply to the United States Army Corps of Engineers for a revised permit to include a water line along Helm Drive, that process would take between one and four months, and could be accomplished in less than one month due to the permit being a revised one and not an entirely new one.

11. No valid section line easement was created over Roe's property because the survey of Section 14, Township 1 South, Range 2 West was completed on June 7, 1913 and thus predates the 1923 legislation by the Territory of Alaska.

12. No valid section line easement was created over Roe's property because on April 4, 1915 homestead entry prevented the property from being burdened with a section line easement.

13. From January 18, 1949 until March 20, 1953, no section line easement could be created because 19 SLA 1923 was repealed by the compilation of Alaska laws in 1949 and the acceptance of the grant under 43 U.S.C. Section 923 was not again in effect until the passage of 35 SLA 1953 on March 20, 1953, now codified at AS 19.10.010.

14. Lynn Hollist (Hollist) made a homestead entry, which included Roe's property on July 15, 1949 and was issued a federal patent to land including Roe's property on August 23, 1949. See Exhibit C.

15. No valid section line easement was created over Roe's property because Hollist's homestead entry occurred in the period between January 18, 1949 and March 20, 1953.

16. Under Alaska law, section line easements may not be utilized for the purpose of constructing a private water line as College Utilities proposes to do on Roe's property commencing on June 19, 2018.

17. If Alaska law does allow a section line easement to be utilized for the purpose of constructing a private water line as College Utilities proposes to do on Roe's property commencing on June 19, 2018, AS 19.25.010 requires that College Utilities first obtain a written permit to do so issued by the State of Alaska, Department of Transportation and Public Facilities, which College Utilities has failed to do.

18. If College Utilities undertakes its entry onto Roe's property and proposed hydro axing, clear cutting, trenching, and other activities on Roe's property, Roe will suffer irreparable harm, including but not limited to the invasion of his privacy and the loss of the quiet enjoyment of his property as College Utilities cuts down hundreds of mature trees, taking without compensation essentially an acre of Roe's property and creating a public thoroughfare that will be frequented by pedestrian and all-terrain-vehicle (ATV) traffic making their way over his property to the lake on which it borders. Quiet and peaceful walks to and along the lakeshore would be no more, to be replaced by the noise of ATVs and other motorized vehicles and the disruption of numerous persons traversing Roe's property and accessing what is intended to be a man-made private lake. If DOT permits College Utilities to take the property, it must proceed under the condemnation statutes, or the taking would be per se unconstitutional.

19. The area of Roe's property that College Utilities would enter and conduct its hydro axing and other activities on is a small nature preserve. In addition to the trees

located in that area, there are numerous other forms of vegetation. These include large raspberry patches, roses, irises, and numerous wildflowers, all of which would be destroyed and unable to be replaced if College Utilities conducts its activities on Roe's property.

20. If College Utilities undertakes its proposed hydro axing, clear cutting, trenching, and other activities on Roe's property, Roe will suffer damages in an amount in excess of One Hundred Thousand Dollars (\$100,000), for which College Utilities is liable.

**COUNT I  
(Trespass)**

21. Roe re-alleges all previous allegations and further alleges as follows.

22. Any entry of College Utilities onto Roe's property or cutting of trees or any other activity on Roe's property by College Utilities constitutes an intentional trespass in violation of the common law of Alaska, for which College Utilities is liable to Roe for compensatory and punitive damages in an amount in excess of One Hundred Thousand Dollars (\$100,000).

**COUNT II  
(Unlawful Cutting Of Timber, AS 09.45.730.)**

23. Roe re-alleges all previous allegations and further alleges as follows.

24. Any cutting of trees on Roe's property by College Utilities constitutes the unlawful cutting of timber in violation of AS 09.45.370, for which College Utilities is liable

to Roe for treble damages in an amount in excess of One Hundred Thousand Dollars (\$100,000).

**COUNT III**  
**(Injunctive Relief)**

25. Roe re-alleges all previous allegations and further alleges as follows.

26. Any entry by College Utilities onto Roe's property and any hydro axing and any other activity by College Utilities on Roe's property is without due process of law and is otherwise illegal and unlawful under Alaska law so that College Utilities should be immediately and permanently restrained and enjoined from entering onto Roe's property and from hydro axing or conducting any other activities on Roe's property.

27. Any entry by College Utilities onto Roe's property and any hydro axing and any other activity by College Utilities on Roe's property would cause irreparable harm to Roe so that College Utilities should be immediately and permanently restrained and enjoined from entering onto Roe's property and from hydro axing or conducting any other activities on Roe's property.


**PRAYER FOR RELIEF**

Roe asks that the Court temporarily restrain and preliminarily and permanently enjoin College Utilities from entering his property and from hydro axing, clear cutting, trenching, or conducting any other activities on Roe's property and for an award of

compensatory, treble, and punitive damages in excess of \$100,000, costs and attorney's fees, and other relief the Court considers fair.

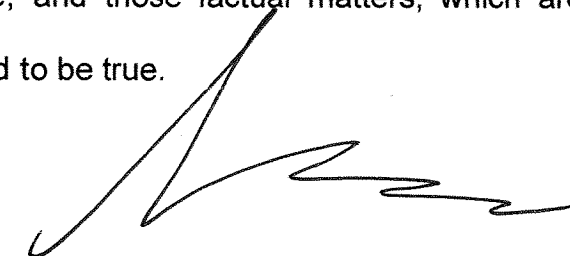
DATED at Fairbanks, Alaska this 25<sup>th</sup> day of June, 2018.

KRAMER and ASSOCIATES  
Attorney(s) for Plaintiff

By:   
\_\_\_\_\_  
Robert John  
ABA # 8911069

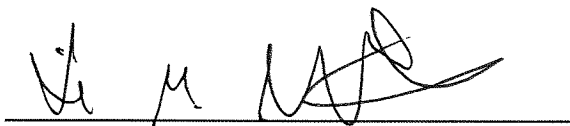
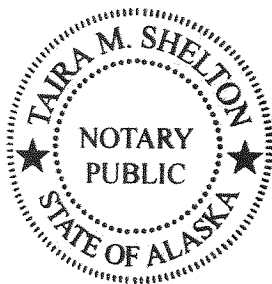
VERIFICATION

I, Jason Roe, having been duly sworn, depose and state that I have read the foregoing Verified Complaint For Injunctive Relief And Damages, and that the information stated therein is factual and true, and those factual matters, which are stated upon information and belief, are believed to be true.



Jason Roe

Subscribed and sworn to or affirmed before me in Fairbanks, Alaska on 25, June 2018.



Clerk of Court, Notary Public, or other person authorized to administer oaths.

My commission expires 4-24-22

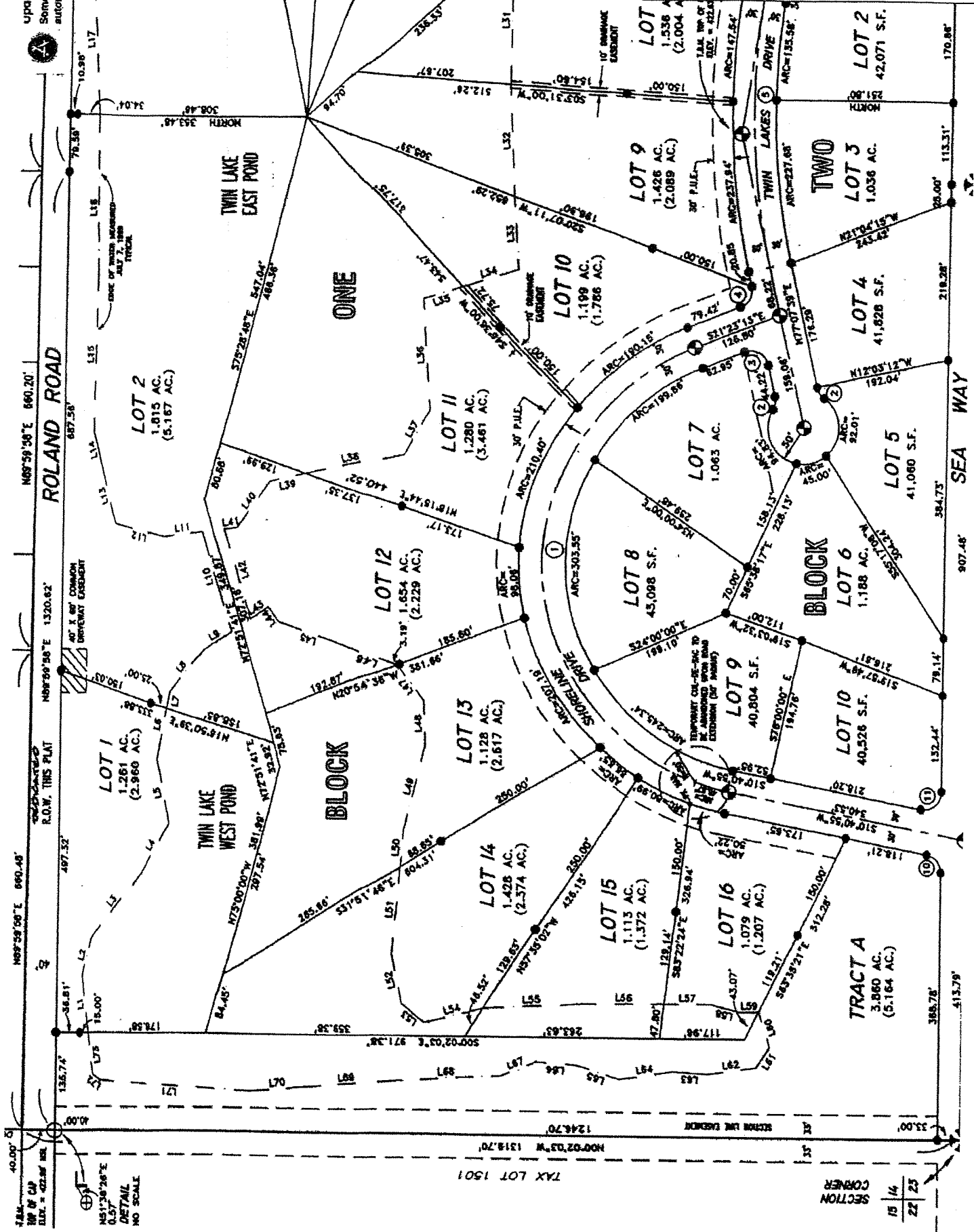


**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was mailed/emailed/hand-delivered this 25 day of June, 2018 to:

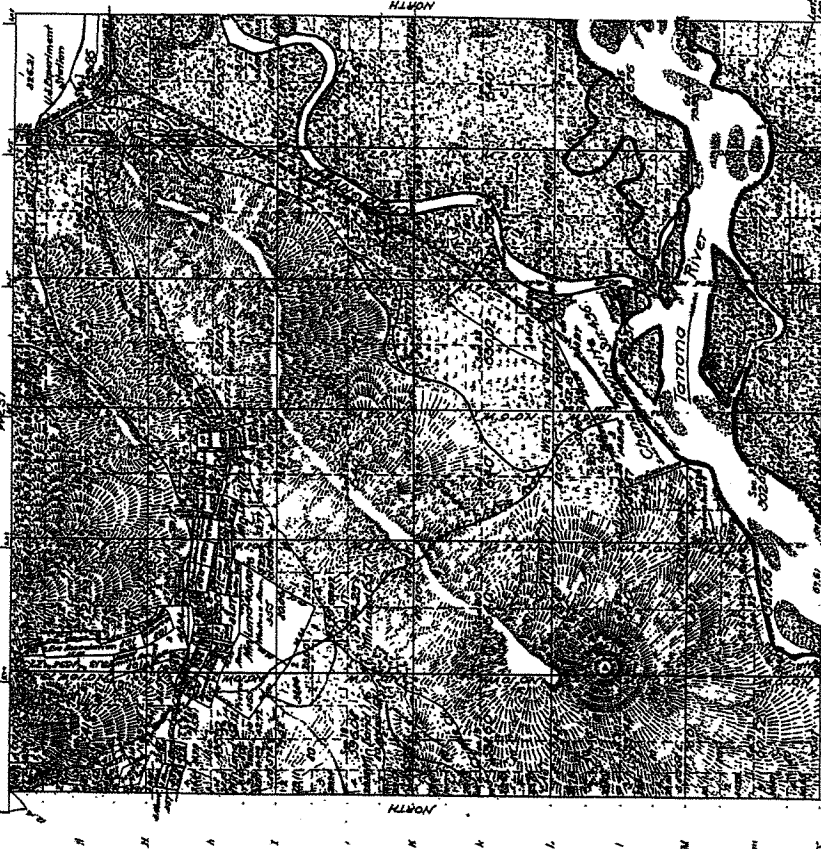
Cassandra Tilly  
Law Office of Cassandra Tilly  
PO Box 80216  
Fairbanks, Alaska 99708

By: Taira Skelton  
Kramer and Associates



15-97358

Township No. 1 South Range No. 2 West of the Fairbanks Meridian, Alaska  
Fairbanks Base



Section	Area (Acres)	Owner
1	6.25	State of Alaska
2	6.25	State of Alaska
3	6.25	State of Alaska
4	6.25	State of Alaska
5	6.25	State of Alaska
6	6.25	State of Alaska
7	6.25	State of Alaska
8	6.25	State of Alaska
9	6.25	State of Alaska
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27	6.25	State of Alaska
28	6.25	State of Alaska
29	6.25	State of Alaska
30	6.25	State of Alaska
31	6.25	State of Alaska
32	6.25	State of Alaska
33	6.25	State of Alaska
34	6.25	State of Alaska
35	6.25	State of Alaska
36	6.25	State of Alaska

Section	Area (Acres)	Owner
1	6.25	State of Alaska
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32	6.25	State of Alaska
33	6.25	State of Alaska
34	6.25	State of Alaska
35	6.25	State of Alaska
36	6.25	State of Alaska

The above map of Township No. 1 South Range No. 2 West of the Fairbanks Meridian Alaska is subject to the right of the interest therein in the U.S. Surveyor General's Office, Fairbanks, Alaska, June 1, 1915.

*M. L. D. [Signature]*  
Surveyor General

Section	Area (Acres)	Owner
1	6.25	State of Alaska
2	6.25	State of Alaska
3	6.25	State of Alaska
4	6.25	State of Alaska
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36	6.25	State of Alaska

# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the District Land Office at Fairbanks, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain", and the acts supplemental thereto, the claim of Lynn O. Hollist has been established and duly consummated in conformity to law for the following described land:

Fairbanks Meridian, Alaska.

T. 1 S., R. 2 W.,  
sec. 14, Lot 6 and Subject;  
sec. 15, ~~Subject~~.

The area described contains 158.03 acres, according to the Official Plat of the Survey of the said Land on file in the Bureau of Land Management.

NOW KNOW YE, That there is therefore granted by the United States, unto the said Lynn O. Hollist, the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said Lynn O. Hollist and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the land hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. And, there is also reserved to the United States, a right of way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat., 305). And there is reserved from the land hereby granted, a right of way thereon for roads, roadways, highways, tramways, trails, bridges and appurtenant structures constructed, or to be constructed by, or under authority of the United States, or of any State created out of the Territory of Alaska, in accordance with the Act of July 24, 1947 (61 Stat., 418).

Excepting and reserving also to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat., 755), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States, through its authorized agents or representatives at any time, to enter upon the land and prospect for, mine and remove the same.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of

Land Management, in accordance with the provisions of the Act of June 17,

1948 (62 Stat., 476), has, in the name of the United States, caused these letters

[SEAL]

to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the ~~TWENTY-THIRD~~

day of ~~AUGUST~~ in the year of our Lord one thousand nine

hundred and ~~FOURTY-NINE~~ and of the Independence of the

United States the one hundred and ~~SEVENTY-FOURTH~~.

For the Director, Bureau of Land Management.

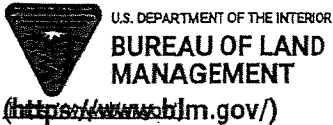
*Jae. J. Hoover*

By \_\_\_\_\_

Chief, Patents Section.

Patent No. 1127095

ABOUT US (HTTPS://WWW.BLM.GOV/ABOUT) | LEADERSHIP (HTTPS://WWW.BLM.GOV/LEADERSHIP) | MEDIA CENTER (HTTPS://WWW.BLM.GOV/MEDIA) |  
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SDMS ALASKA

**SPATIAL DATA MANAGEMENT SYSTEM**

Alaska Case Retrieval Enterprise System (ACRES)

**Case Abstract for: AKF 007148**

CASE DATA														
Case Serial Num:	AKF 007148	FRC Site Code:	WAS											
Case Type:	256700 He Alaska	Accession Num:	-											
Case Status:	Closed	Box Num:	(of) -											
Case Status Actn:	Case Closed	Disp Data:	-											
Case Status Date:	31-AUG-1949	Location Code:	ARCHIVE											
SM Acres:	0.0000	Abnd Yr:	-											
Claim Name:	-													
CUSTOMER DATA														
Cust ID:	000046447													
Customer Name:	HOLLIST LYNN O	Interest Relationship:	Applicant											
Customer Address:	Withheld	Percent Interest:	0.0000											
ADMINISTRATIVE/STATUS ACTION DATA														
Date	Code Description:	Remarks	Doc ID	Ofc	Emp	Doc Img *								
28-MAY-1948	001 Application Filed	APPLICATION RECEIVED	--	PSF	DLC	--								
15-DEC-1948	518 W/Val Lse Min Rpt Rcvd	--	--	AJA	ADP	--								
04-FEB-1949	130 Field Report Requested	--	--	AJA	DLC	--								
15-JUL-1949	872 Final Cert issued	--	--	AJA	DLC	--								
23-AUG-1949	879 Patent Issued	--	PA0001127095	AJA	DLC	Not Available								
31-AUG-1949	970 Case Closed	TITLE TRSF	--	PSA	DLC	--								
27-AUG-1992	996 Converted To Prime	--	--	940	BKM	--								
FINANCIAL ACTION DATA														
Date	Code/Description	Ofc	Emp	Money Amt	Acct Adv	Asmt Yr								
28-May-1948	072 Filing Fee Received	PSF	DLC	10.00	--	--								
GENERAL REMARKS														
No Case Remarks found														
GEOGRAPHIC NAMES														
No Geonames found														
LAND DESCRIPTION														
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