1. *Easement by Prescription*: "Prescriptive easement" is the term associated with an easement interest that accrues to an individual under Alaska's adverse possession statutes[1] when the use meets the "*prescribed*" period of time along with other conditions. A successful adverse claim for an access road or utility would result in a judgment granting an easement interest, where a claim resulting from an encroaching structure would likely result in a judgment granting a fee interest. Generally, the elements of adverse possession are that:
    a. the possession must have been continuous and uninterrupted;
    b. the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner; and
    c. the possession must have been reasonably visible to the record owner.

Due to the long history of the Massie claims and the necessity to service the claims by road, there should be little difficulty in providing evidence that the roads existed for many decades longer than the 10 years required under A.S. 9.10.030. There are many cases discussing adverse possession and prescription between private parties in Alaska law. And while ANCSA Corporations are considered to be private parties in many contexts, ANCSA lands have been afforded special protection from alienation by adverse possession in federal law. A 1988 amendment to ANCSA[2] effectively limits the ability of an adverse user to claim an easement by prescription across ANCSA corporation lands including those of Sitnasuak. The amendment included a "developed" lands exception that would not appear to be applicable to Sitnasuak lands surrounding the Massie properties.

Another issue that would make assertion of an easement by prescription difficult is the agreements or permits that we understand have been issued by Sitnasuak and accepted by the Massie's in the past. We presume that any such agreements are a result of the ambiguity of their existing access rights. These agreements represent permissive use of Sitnasuak lands and would serve to defeat a claim by adverse possession.

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[1] A.S. 9.45.052. Paragraph (a) of the statute states that "…The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more, or the uninterrupted adverse notorious possession of real property for 10 years or more because of a good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant, is conclusively presumed to give title to the property except as against the state or the United States."

[2] Section 11 of Public Law 100-241, 101 Stat. 1807, Feb. 3, 1988, (ANCSA Amendment) "amends section 907 of ANILCA (43 USCS 1636) to provide automatic protection for ANCSA lands. So long as ANCSA lands are not "*developed, leased or sold to third parties, they are exempt from: (a) adverse possession or similar claims based on estoppel; ….*" (Quoted from Alaska Native Lands: Aboriginal Title, to ANCSA and Beyond, David S. Case, 1.23.90) – This provision has been tested in the Alaska Supreme Court cases Kenai Peninsula Borough v. Cook Inlet Region, Inc., 807 P.2d 487 (1991) and Snook v. Bowers, 12 P.3d 771 (2000). The term "developed" can be difficult to interpret. Under the Kenai case the court ruled that "*In the context of raw land, the common meaning of 'developed' includes subdivided property which is ready for sale." And "...to be within this definition of 'developed' the land must be practically and legally suitable for sale to the ultimate user.*"