ANCSA 17(b)(2) "Valid existing right": Both of the previously mentioned Sitnasuak patents contain the following language[1]:

"THE GRANT OF THE ABOVE-DESCRIBED LANDS IS SUBJECT TO: 1. Valid existing rights therein, if any, including but not limited to those created by any lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claim Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. § 1616(b)(2) (1976), any valid existing right recognized by ANCSA shall continue to have whatever right of access (emphasis added) as is now provided for under existing law;"

The last sentence in the paragraph above referencing Sec. 17(b)(2) of ANCSA appears to provide the key for a viable access option across Sitnasuak lands to the [redacted] property. The text of Sec. 17(b)(2) states:

"That any valid existing right recognized by this Act shall continue to have whatever right of access (emphasis added) as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access."

The assertion in this section is that [redacted] and their predecessors in interest have had valid legal access from the day the claims were located across public domain lands and that this legal access constitutes a "valid existing right" that Sitnasuak is obligated to recognize under the terms of their patent and ANCSA. The right of access across ANCSA lands to a mining claim was considered and supported in the Interior Board of Land Appeals case Herbert I. Stewart 82 IBLA 329[2]. In that case, the appellant argued that his right to access mining claims across public domain lands would not be protected unless BLM expressly reserved a private easement in the ANCSA conveyance. Furthermore, without such an express reservation, the appellant would have the "onus of establishing his entitlement to access" with respect

to the ANCSA corporation and that this would likely require litigation. The court noted that there is no provision in ANCSA for an express reservation for a private right of access and that the appellant will continue to have whatever right of access existed prior to ANCSA under the terms of section 17(b)(2). The decision states "That right of access, impliedly granted by Congress under the general mining laws, for mining purposes across public land is well recognized by both the Department and the courts….However, with the conveyance of such public land into private ownership, if the right of access is not somehow preserved, it would be lost. Thus, section 17(b)(2) of ANCSA, supra, expressly stated that valid existing rights would 'continue.' This includes the right of access provided for under the 1872 mining law." The court then acknowledged that maintenance of the right of access may require coordination with the ANCSA Corporation but that this would not necessarily result in court action.

We believe that [redacted] "valid existing rights" under ANCSA Section 17(b)(2) represents a viable and reasonable basis for access to their mineral patents along the [redacted] and [redacted]. As it represents an existing right, no permit or agreement for this right of access from Sitnasuak would be

[1] Note: The paragraph included in Patent 50-82-0148 makes an additional reference to leases issued under Sec. 6(g) of the Alaska Statehood Act.

[2] IBLA 84-148 decided September 7, 1984.

required. What we cannot say is whether the location of this access right pre-ANCSA is coincident with the location of the current access road. Logically, it would serve no purpose for Sitnasuak to argue the location of the access right where there is only a single apparent track and to do so would only result in duplicative roads in close proximity to each other.