

**From:** John Bennett  
**To:** [REDACTED]  
**Subject:** RE: (LAST) REVISED Seward Highway Memo  
**Date:** Wednesday, July 08, 2015 2:50:00 PM

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[REDACTED] just for grins, I went to the DNR Area Plans site and selected the draft Eastern Tanana Plan that is dated August 2014 so it should reflect DNR's latest philosophies, definitions and interpretations. <http://dnr.alaska.gov/mlw/planning/areaplans/etap/etapplan.cfm> You can get the entire plan and others at this site but I have attached some excerpts from the plan. Although it doesn't quite equate all of DOT lands with University or MHT lands, the several highlights suggest that this land classification plan just does not apply to DOT&PF owned and managed lands. Clearly when DOT heads off on a new alignment across DNR public domain lands, they consider the issuance of a management right or permit to DOT with respect to the intent of the approved plan. And if this doesn't already appear that DOT lands are interpreted by DNR as exempt, I suspect that if your current opinion gets traction, and it becomes clear that most of DOT ROW does not fall under the public domain management of DNR, that would put the final nail in the coffin.

I may be missing exactly what you are saying below, but it does not appear to be a very high hurdle to assert that DOT is already exempt from AS 38.04. JohnB

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**From:** [REDACTED]  
**Sent:** Wednesday, July 08, 2015 2:01 PM  
**To:** John Bennett  
**Subject:** RE: (LAST) REVISED Seward Highway Memo

Thanks for all you help John. I'll update the memo one last time before I send it.

Later in this process, maybe when I pick up the ARRC piece, I'd like to discuss the submerged lands issues. Since my energy was already focused in this direction, I also re-opened the legislation. I'd like to get your ideas on exempting DOT lands from AS 38.04 (classifications of state land), like UA was able to do. I don't see a downside, but would like to get your input.

Thanks again!

[REDACTED]

[REDACTED]

[REDACTED]

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**From:** John Bennett [<mailto:JBennett@rmconsult.com>]  
**Sent:** Wednesday, July 08, 2015 [REDACTED]  
**Subject:** (LAST) REVISED Seward Highway Memo

I wanted to get that last email out fast before you issued the opinion. I think my track changes are evident. You had deleted the other “northern portion” references except one and in section IV there remained one reference to federal public domain managers that I think you intended to delete. The others are very minor.

One item you probably didn’t need to address in this opinion but might come up later is the status of submerged lands that are crossed by highway rights of way. Traditionally, the way we handled Omnibus Deed ROW that crossed submerged lands was that we would not come back post statehood or at such a time that we were doing a new project and submit an application to DNR where the Omnibus ROW crossed submerged lands. DNR could argue that the title interest within the Omnibus ROW that crossed submerged lands was not the federal governments to grant as it was already held in trust for the future state. For post statehood ROW such as a BLM or title 23 grant across federal lands, if the new alignment crosses a body of water that meets the submerged definition, then we would apply to DNR for a ROW permit.

For the Seward project I know that the ARRC 200’ corridor extends out into the tidelands but I’m not sure if any of the Omnibus 300’ ROW does also. Something we can talk about later if it becomes an issue.

Otherwise, I believe you are correct and that it is time to pull the trigger. Everything you said is supportable and is clearly stated. If it makes sense to me then even those folks at DNR should be able to understand it. Good job! Johnb

**John F. Bennett, PLS, SR/WA** *Senior Land Surveyor – Right of Way Services*

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