

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGIONAL LANDS OFFICE

Regional Manager's Decision

ADL 234615
City of Kwethluk
Public Utility Easement

REQUESTED ACTION

On November 20, 2024, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), Southcentral Regional Land Office (SCRO), received an application for an easement from the Alaska Native Tribal Health Consortium (ANTHC) on behalf of the City of Kwethluk (the applicant)s for a proposed public utility easement on State-owned, DMLW-managed lands underlying the Kwethluk River near Kwethluk, Alaska¹. The purpose of the requested easement is to authorize placement of a “pier supported water intake structure to replace the current floating intake [line] located in the Kwethluk River.” Components of the structure on DMLW-managed lands will include two 36-inch steel piles and a submersible pump. The easement as proposed will be approximately 70 feet long by 30 feet wide for a total acreage of .048 acres, more or less. See Attachment A.

RECOMMENDED ACTION

DMLW recommends issuance of the requested easement with the following characteristics:

- Type of Easement: Public Utility Easement
- Length: 70 feet long
- Width: 30 feet wide
- Acreage: .048 acres, more or less
- Term: Indefinite
- Grantee: City of Kwethluk

SCOPE OF DECISION

The scope of this decision is to determine if it is in the State's interest to create an easement for the proposed use. The scope of administrative review for this authorization is limited to (1) reasonable foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and

¹ Review and include excerpt from PAAD re: tidally influenced sites.

regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the best interest of the State of Alaska. All other aspects of the applicant's project are outside the scope of this decision.

STATUTORY AUTHORITY

The easement application is being adjudicated pursuant to AS 38.05.850 and the Alaska Land Act as amended.

ADMINISTRATIVE RECORD

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations as referenced herein, Land Classification Order No. SC-24-002, the Lower Kuskokwim Site Specific Plan, and the casefile for the application serialized as ADL 234615.

LOCATION INFORMATION

Geographic Location

The easement will be issued on shorelands underlying the Kwethluk River at Kwethluk, Alaska.

Meridian, Township, Range and Section

Section 5, Township 8 North, Range 69 West, Seward Meridian

Other Land Information

- Municipal – City of Kwethluk
- Borough – None. The site is located within the unorganized borough.
- ANCSA Regional Corporation – Calista, Inc.
- ANCSA Local Corporation – Kwethluk, Incorporated
- Federally Recognized Tribe – Organized Village of Kwethluk

TITLE

The State of Alaska holds title to these lands under the Submerged Lands Act of 1953 and the Equal Footing Doctrine, as confirmed in a Recordable Disclaimer of Interest issued by the Bureau of Land Management on June 12, 2013, under Serial Number AA-086371.

THIRD PARTY INTERESTS

There are no third-party interests at the project site.

PLANNING AND CLASSIFICATION

The proposed project affects lands described in the Lower Kuskokwim Site Specific Plan (the Plan). The areawide management guidelines outlined on pages 13 and 14 of the Plan are as follows:

General Guidelines

- State land will be managed to protect access and public resources. The types of resources to be protected include, but are not limited to, habitat, recreation, water quality, watersheds, and trails.
- All authorizations for use of state land within the planning area will be consistent with the management intent in this plan.
- State land will remain open to mineral entry unless specifically closed.
- In considering authorizations for the use of state land, ADNR will adjudicate applications to:
 - minimize damage to streambeds, fish and wildlife and their habitats, vegetation, trails, and other resources;
 - minimize conflicts between resource conservation and use; and
 - protect the long-term value of the resource, public safety, and the environment.
- If authorizations from other agencies are required, ADNR will consider issuing a permit or lease contingent upon issuance of these other authorizations.
- Protect significant cultural resources through the following actions:
 - The Office of History and Archology (OHA) within the Department [sic] of Parks and Outdoor Recreation (DPOR) reviews authorizations, construction projects or land uses for potential conflict with cultural resources. The office determined [sic] if there may be an adverse effect on heritage resources and makes recommendations to mitigate these effects.
 - Cooperating with concerned government agencies, Alaska Native corporations, statewide or local group, and individuals to develop guidelines and recommendations on how to avoid or mitigate identified or potential conflict.
 - Require the establishment of buffers (50' or greater) around significant cultural resources as part of the overall protection process when using state lands.

The utility easement authorization proposed in ADL 234615 was circulated for review and comment to agencies, ANCSA corporations and local government officials for a period of 30 days. ADF&G responded that they will require the applicant to obtain a fish habitat permit for activities associated with the proposed development. No comments were received specific to wildlife, recreation, water quality, watersheds, trails, public safety, or the location of significant cultural resources. Therefore, SCRO has determined that the project does not conflict with the general guidelines for issuance of authorizations within the Plan area.

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The specific management unit affected by activities described in ADL 234615 is L-02, as indicated on Map 1-2 of the Plan. The Resource Allocation Table for Unit L-02 on page 18 of the Plan indicates that the land is designated for Waterfront development. According to pages 16 and 17 of the Plan, the Waterfront development designation converts to the classification Waterfront development land as defined in 11 AAC 55.215. The management intent for Unit L-02 is stated as follows:

The unit is to be managed to accommodate tideland commercial and industrial uses. Material extraction is an allowed use.

It is unlikely that all of the area within this unit will be used for future commercial and industrial tideland uses. A fairly large area of tidelands is designated Waterfront Development given the uncertainty of the exact location of future facilities needed to support this [sic] local communities.

The proposed public utility easement described in ADL 234615 does not conflict with the management intent for Unit L-02. Public services such as the community water system that the easement is a part of will support commercial and industrial uses of the tidelands in Kwethluk.

ACCESS

Access to the project site is overland within platted rights of way or by boat on the Kwethluk River.

PUBLIC NOTICE AND AGENCY REVIEW

Public Notice Summary

Public notice of the application was circulated between July 2, 2025, and August 4, 2025. The notice was amended once on July 11, 2025, to correct a mistyped ADL number in the original release. The notice was posted to the online State of Alaska Public website, sent to the US Post Office in Kwethluk, and was distributed directly to the following recipients with existing or potential interests in the vicinity of the requested authorization.

- City of Kwethluk
- Kwethluk Incorporated
- Organized Village of Kwethluk
- Calista, Inc.

Public Notice Comment and Response

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No public comments were received.

Agency Review Summary

Agency review of the application was conducted concurrently with the public notice period between October 7, 2024, and November 6, 2024. The notice was sent to the following recipients.

Federal Agencies

- US Army Corps of Engineers, Alaska District
- US Fish and Wildlife Service
- National Oceanic and Atmospheric Administration

State Agencies

- Department of Commerce, Community and Economic Development, DCRA, Local Government Resource Desk Program
- Department of Environmental Conservation, Drinking Water Program
- Department of Fish and Game, Wildlife Conservation Division, Access Defense Program
- Department of Fish and Game, Habitat Division
- Department of Natural Resources, DPOR, Park Permitting Office
- Department of Natural Resources, DPOR, Office of History and Archaeology
- Department of Natural Resources, DOG, Permitting Program
- Department of Natural Resources, DOG, Statewide Pipeline Coordinator's Office

Local Agencies

- City of Kwethluk

Agency Review Comment and Response

Information and comments received from sections within DMLW prior, during and subsequent to the agency review have been considered and included in the preparation of this decision. Comments submitted by agencies outside of DMLW are reported below.

Comment: On July 14, 2025, the Alaska Department of Fish and Game Habitat Section submitted the following.

“Thank you for passing this along for comment. This project will require ADF&G Fish Habitat Permits for both the intake platform construction below OHW, as well as the upgraded intake system.”

DNR Response: The comment was acknowledged. The applicant reported to DMLW on September 18, 2025, that a Habitat Permit application had been submitted to ADF&G.

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Comment: On July 30, 2025, the Alaska Department of Environmental Conservation Drinking Water Program submitted the following.

“Thank you for the opportunity to comment with respect to public water system (PWS) sources. Based on the information provided, this application is for PWS ([PWSID 272017 KWETHLUK NEW PIPED WATER SYSTEM](#)). For this reason, please ensure that the applicant is in compliance with [18 AAC 80](#), and in direct communication with the Drinking Water Program point-of-contact for this region, [the name was provided] (cc’d here).”

DNR Response: The comment was acknowledged. The applicant copied DMLW with an email message to the identified Drinking Water Program point-of-contact on September 18, 2025.

Comment: On July 31, 2025, the Alaska Department of Fish and Game Access Defense Program submitted the following.

“Alaska Department of Fish and Game (ADF&G) has reviewed the attached application from the City of Kwethluk for a public utility easement to install a new water-intake structure and line for the community. The proposed 70-foot-long by 30-foot-wide easement area is situated on State-owned managed shorelands underlying the Kwethluk River in Section 5, Township 8 North, Range 69 West, Seward Meridian; approximately 60.8120 N, 161.4160 W. According to the applicant, they are working with ADF&G on a Fish Habitat Permit. Construction is planned for summer 2025, which will include an 80-foot-long pier extending approximately 55 feet into the Kwethluk River as measured from mean high water. It will be anchored on the shore by an 8-inch steel pile with two 36-inch piles installed in the river. A crane-operated pile-driver or impact hammer will be used to install the piles.

ADF&G has no objection to the authorization of this easement; however, we have the following comment:

1. We have not received a permit application; however, the City of Kwethluk is aware they will need a Fish Habitat Permit and will be contacting our Anchorage Habitat Section office when they have additional information on the project design.

Thank you for the opportunity to review and comment. We ask that you share any applicable comments with the applicant. Additionally, we request a copy of the decision document once it is issued.”

DNR Response: The comment was acknowledged. The applicant reported to DMLW on September 18, 2025, that a Habitat Permit application had been submitted to ADF&G.

No other agency comments from outside of DMLW were received.

ENVIRONMENTAL CONSIDERATIONS

The risk of environmental contamination associated with this proposed public access easement is minimal. Fuel, lubricants and other hazardous materials shall be restricted to those necessary and will be contained within tools and vehicles when equipment is necessary for construction and maintenance activities. No fuel or other hazardous materials are authorized to be stored on site. There are no other known environmental considerations or constraints at this location.

ECONOMIC BENEFIT AND DEVELOPMENT OF STATE RESOURCES

In accordance with AS 38.05.850, DMLW considers if the requested authorization will provide the greatest economic benefit to the State and development of its resources. Specifically, staff assess both the direct and indirect economic benefits and whether the proposed authorization encourages the development of the State's resources.

The authorization considered herein will not provide a direct economic benefit to the State in the form of land use fees. However, the public utility easement will facilitate improvement of the existing community utility system, which will promote conditions for economic development, and so provide an indirect benefit to the state. In consideration of these factors, and because there are no competing requests for authorization, issuance of this public utility easement will provide the greatest economic benefit to the State.

PERFORMANCE GUARANTY

In consideration of the low risk associated with the proposed authorization, the applicant will not be required to provide a performance guarantee.

INSURANCE

In consideration of the low risk associated with the proposed authorization, the applicant will not be required to provide proof of insurance.

SURVEY

A DMLW-approved as-built survey is required to determine the proper location and acreage of installed improvements and the associated easement on State-owned, DMLW-managed lands. The applicant is required to request survey instructions prior to issuance of the entry authorization. The survey must be produced in accordance with survey instructions provided by the DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska. A final easement will not be issued until the as-built survey for the overall project described in ADL 234615 has been approved by DMLW.

The project site is subject to tidal influence. Therefore, the boundary of State jurisdiction will be reported as mean high tide on the required survey in accordance with 11 AAC 53.120.

FEES

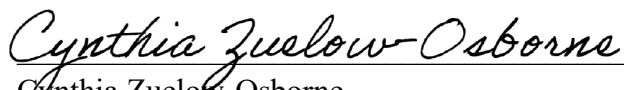
Per 11 AAC 05.020(b)(5), the fees for this authorization will be waived because the applicant is an Alaskan local government office and the request is in the public interest.

ENTRY AUTHORIZATION

An Entry Authorization (EA) is an interim authorization issued when a survey is necessary prior to easement issuance. This EA will be issued for a term ending three years from the date of issuance for the purpose of constructing, surveying, operating, and maintaining the infrastructure considered herein prior to DMLW's issuance of a public access easement. An extension of the EA term may be granted at the written request of the applicant, if granting the extension is deemed appropriate by DMLW, and may be subject to applicable fees. If an extension is required, the applicant must contact DMLW no later than 30 days prior to the expiration of the EA and certify there have been no changes to the approved development plan.

RECOMMENDATION

Based on the information provided by the applicant, as well as a review of relevant planning documents, statutes, and regulations related to this application, it is my recommendation that an easement is issued as described above, on the condition that all stipulations are followed as described in the attached authorization.



Cynthia Zuelow-Osborne

Natural Resource Specialist 3

DMLW Southcentral Regional Land Office

10/14/25

Date

Signatures continue next page.

REGIONAL MANAGER'S DECISION

When adjudicating an easement authorization pursuant to AS 38.05.850, DMLW seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with the public interest. In consideration of all events and criteria listed above, I hereby determine that that authorization to be granted by this decision is consistent with DMLW's mission, that this project is consistent with the overall classification and management intent for this land, and that issuance of an authorization as described above is in the interest of the State of Alaska. The Department assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the authorization. Additional time may be allotted to complete these requirements; however, this will not extend the total term of the authorizations issued under this decision. This decision goes into effect and becomes a final administrative order and decision of the department on the 21st day after issuance.

Brent Reynolds
Brent Reynolds, NRM II
Easement Unit Manager
Southcentral Regional Land Office

10/15/2025

Date

ATTACHMENT A, Vicinity Map
ATTACHMENT B, Plan Sheets

Appeal instructions follow.

APPEAL

An eligible person affected by this decision may appeal to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(6), which has been set at \$200 under the provisions of 11 AAC 05.160(a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting DNR's Appeals Program via phone at (907) 269-3565, via email at dnr.appeals@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.

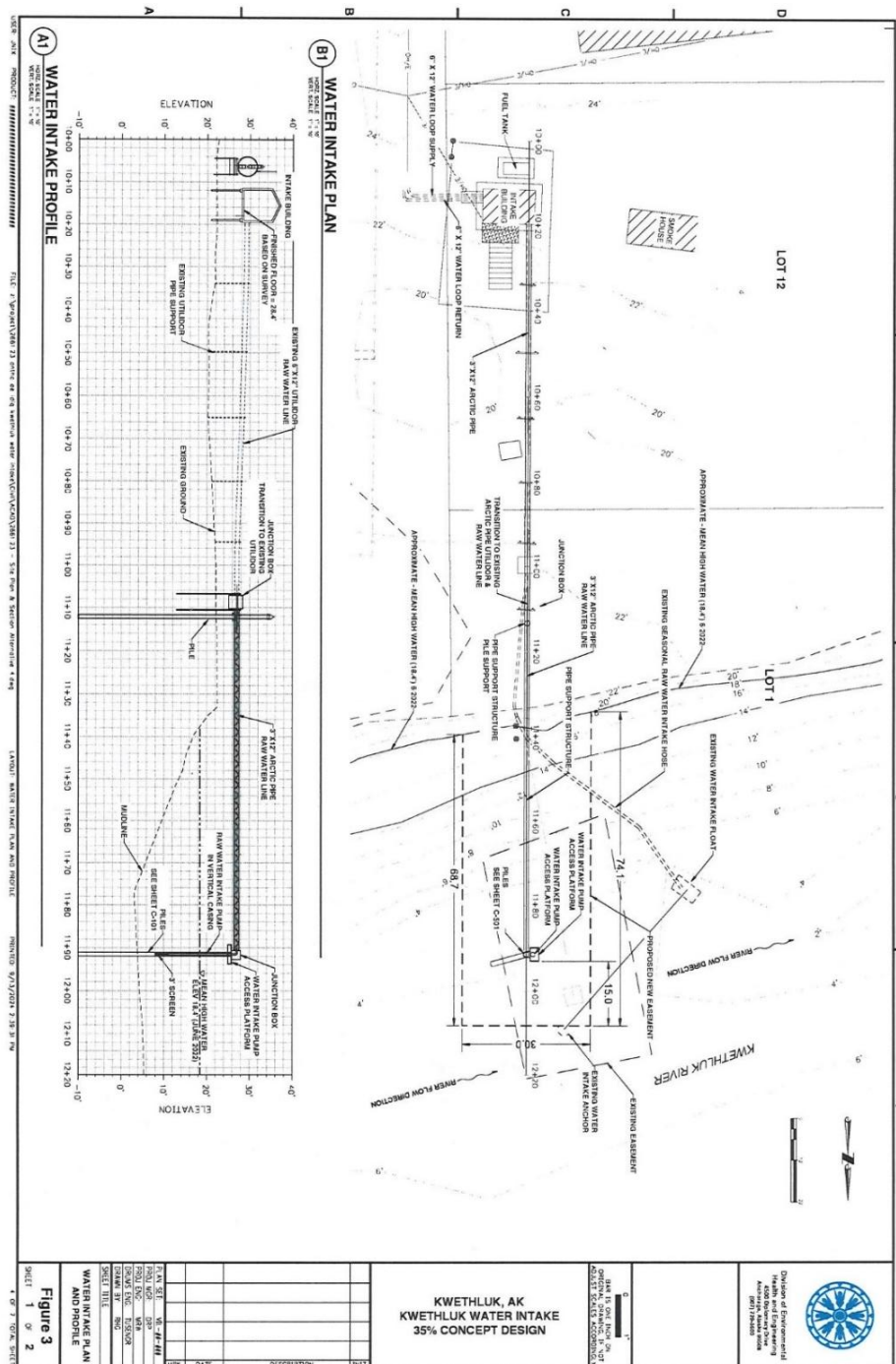
Attachments follow.

ADL 23465 Attachment A
Vicinity Map



Plan Sheet 1

Note: The project site is subject to tidal influence. Therefore, the boundary of State jurisdiction will be reported as mean high tide on the required survey in accordance with 11 AAC 53.120.



ADL 23465 Attachment B Plan Sheet 2

