

## Chapter 62 **Tide and Submerged Lands**

**11 AAC 62.010. Short title.** All tide and contiguous submerged lands within the boundaries of the State of Alaska, except those provided for hereafter, from the mean high water line and seaward three geographical miles from the mean low water line, or further as may in the future be determined, are vested in the State of Alaska. These regulations pertain to the use and disposal of state owned tide and contiguous submerged lands. The regulations may be referred to as the Tideland Regulations.

**11 AAC 62.020. Ownership.** Except as otherwise provided herein, the State of Alaska, by virtue of the Submerged Lands Act of 1953, 43 U.S.C. 1301 (67 Stat. 29), Public Law 85-303 (71 Stat. 623) and Public Law 85-508 (72 Stat. 339), reserves and has succeeded to all right, title, and interest of the United States, including lands, improvements, reclaimed lands, or title to lands and natural resources it had to all lands permanently or periodically covered by tidal waters up to the line of mean high tide and seaward to a line three geographical miles distant from the coast line or further as may be allowed; provided, however, that those lands and rights therein lawfully vested in others by Acts of Congress prior to January 3, 1959 shall not be infringed upon.

**11 AAC 62.030. Protection of fish and game.** Repealed.

**11 AAC 62.040. Herring spawn covenant.** Repealed 8/19/77.

**11 AAC 62.050. Classification.** Repealed.

**11 AAC 62.060. Mining.** Repealed.

**11 AAC 62.070. Materials.** Repealed.

**11 AAC 62.080. Reservations.** Repealed 8/19/77.

**11 AAC 62.090. Damages.** Repealed 8/19/77.

**11 AAC 62.100. Public use.** Repealed 8/19/77.

**11 AAC 62.110. Federal priority.** Repealed 8/23/87.

**11 AAC 62.120. Notice and posting.** Repealed 8/19/77.

**11 AAC 62.130. Protest.** Repealed.

**11 AAC 62.140. Deposits.** Repealed 8/19/77.

**11 AAC 62.150. Site examination.** The director or his representative shall have the right to enter upon any state held tidelands that are leased or upon which a permit was granted to make any and all examinations or investigations that are deemed necessary.

**11 AAC 62.160. Loss of preference rights; outside municipality.** An occupant not seaward of a municipal corporation claiming a Class I, Class II, or Class III preference right shall lose same unless said occupant makes application to the director to exercise such preference right within two years from the effective date of these regulations, excepting, however, an occupant of tide or submerged land seaward of a municipal corporation, or any lands which the director may convey to a municipal corporation under these regulations shall not be deprived of his preference right should the municipality fail or refuse to exercise its right to a

conveyance within the time prescribed by these regulations, but such preference right shall be extended to said occupant for a period of two years subsequent to the last day said municipality may exercise its preference right.

**11 AAC 62.170. Loss of preference rights; municipality.** Repealed.

**11 AAC 62.180. Unoccupied and unappropriated state owned tide and contiguous submerged lands.** When not limited by general law, the non-exclusive use of unoccupied and unappropriated state owned tide and submerged lands shall not be denied any citizen of the United States or resident of Alaska.

**11 AAC 62.190. Waste or injury to land.** Repealed 8/19/77.

**11 AAC 62.200. Applications.** Repealed.

**11 AAC 62.210. Appeal.** An eligible person affected by a decision issued under this chapter may appeal that decision in accordance with 11 AAC 02.

**11 AAC 62.220. Appeal - notice.** Repealed 11/7/90.

**11 AAC 62.230. Finality of decisions.** Repealed 11/7/90.

**11 AAC 62.240. Completion of purchase requirements.** Following the appeal period and the commissioner's approval and ruling, as the case may be, the director shall notify the applicant that the division is prepared to issue an appropriate contract. Upon receipt of the notice, the applicant shall be granted 30 calendar days in which to remit to the division any sums that may be due and shall also complete all necessary documents. Failure to do so shall result in the forfeiture of any and all rights previously acquired under the proposed sale, grant, or lease, and in addition, moneys paid to or deposited with the division shall be forfeited pursuant to sec. 140.

**11 AAC 62.250. Jurisdiction.** This part shall govern all surveys on tidelands, submerged lands, or shore lands within the State of Alaska, which outline an area to be transferred to the occupant by the state.

**11 AAC 62.260. Preliminary plat.** Repealed 3/27/80.

**11 AAC 62.270. Preliminary plat requirements.** Repealed 3/27/80.

**11 AAC 62.280. Survey procedure.** Repealed 3/27/80.

**11 AAC 62.290. Procedure on final plat.** Repealed 3/27/80.

**11 AAC 62.300. Final plat requirements.** Repealed 3/27/80.

**11 AAC 62.310. Preference right tideland.** Repealed 8/19/77.

**11 AAC 62.320. Municipal corporations.** Repealed 8/19/77.

**11 AAC 62.330. Rules and regulations provided.** Repealed 8/19/77.

**11 AAC 62.340. Application; municipal corporation.** Repealed.

**11 AAC 62.350. Proof of qualifications.** Each municipal corporation submitting an application for conveyance of lands seaward of their corporate boundaries shall submit to the director an affidavit stating the date of incorporation, or a certified copy of the charter.

**11 AAC 62.360. Public notice.** Repealed 8/19/77.

**11 AAC 62.370. Preference rights.** Repealed 8/19/77.

**11 AAC 62.380. Additional land.** Repealed 8/19/77.

**11 AAC 62.390. Appeals.** Repealed 8/19/77.

**11 AAC 62.400. Adjoining owners protected.** Repealed 8/19/77.

**11 AAC 62.410. Non-preference right tideland.** Repealed 8/19/77.

**11 AAC 62.420. Final plat of survey for municipal corporations.** Upon the director's approval and acceptance of the requirements set out in this section, the municipal corporation, at its own expense, shall furnish a final survey plat as specified in AS 38.05.

**11 AAC 62.430. Occupant not seaward of municipal corporation or surveyed townsite having class I preference right.** Repealed 8/19/77.

**11 AAC 62.440. Applications: Class I preference right.** Tidelands application Form DL-84 shall be completed as required by sec. 200 of this chapter and accompanied with the necessary data required by sec. 270 of this chapter. The director shall, within 60 days after receipt of the application, issue his tentative approval or disapproval as to the content and form of said application and, if disapproved, shall state his reasons therefor.

**11 AAC 62.450. Proof of qualifications.** Persons claiming a Class I preference right to tide and contiguous submerged lands not seaward of a municipal corporation or surveyed townsite shall submit an affidavit of occupancy on Form DL-85, and such additional proof as deemed necessary by the director. The affidavit shall be submitted to the director with the application.

**11 AAC 62.460. Public notice.** Repealed 8/19/77.

**11 AAC 62.470. Deposits.** Repealed 8/19/77.

**11 AAC 62.480. Final plat of survey for nonmunicipal applicants.** Upon the director's approval of the application, the applicant shall, at the applicant's own cost, furnish a final plat of survey to the division.

**11 AAC 62.490. Site examinations.** The director or his representative shall be allowed to enter upon and conduct any examination or survey of tidelands pursuant to sec. 150 of this chapter.

**11 AAC 62.500. Additional tide and submerged lands.** Repealed 8/19/77.

**11 AAC 62.510. Loss of preference rights.** Repealed 8/19/77.

**11 AAC 62.520. Conveyance of title.** Upon fulfillment of all the necessary requirements herein, the director shall cause title to be conveyed.

**11 AAC 62.530. Occupant not seaward of municipal corporation but seaward of townsite having a Class III preference right.** Repealed 8/19/77.

**11 AAC 62.540. Waiver.** The waiver shall be executed on Form DL-86 obtained from the director and when properly completed shall be returned, together with the application, to the director.

**11 AAC 62.550. Application.** Repealed 8/19/77.

**11 AAC 62.560. Failure to execute waiver.** Repealed 8/19/77.

**11 AAC 62.570. Loss of preference right.** Should the holder of a Class II preference right fail to obtain a Class I preference right by completing the waiver on Form DL-86 within two years from the effective date of these regulations, his right to procure a Class I preference right shall be lost.

**11 AAC 62.580. Occupant not seaward of municipal corporation having a Class III preference right.** Repealed 8/19/77.

**11 AAC 62.590. Application; Class III preference right.** Tidelands application Form DL-87 for purchase of such lands shall be completed pursuant to sec. 200 of this chapter and returned to the director with the necessary data prescribed by sec. 270 of this chapter. The director shall, within 60 calendar days after receipt of application, issue his tentative approval or disapproval as to the contents and form of said application and, if disapproved, shall state his reasons therefor.

**11 AAC 62.600. Proof of qualifications.** Persons claiming a Class III preference right to tidelands not seaward of a municipal corporation shall submit an affidavit of occupancy on Form DL-85 and such additional proof as deemed necessary by the director. The affidavit shall be submitted to the director with the above application.

**11 AAC 62.610. Public notice.** Repealed 8/19/77.

**11 AAC 62.620. Deposits.** Repealed 8/19/77.

**11 AAC 62.630. Site examinations.** The director or his representative shall be allowed to enter upon and conduct any examination or survey of tidelands pursuant to sec. 150 of this chapter.

**11 AAC 62.640. Final plat of survey.** Repealed 3/27/80.

**11 AAC 62.650. Appraisal.** The director or his representative shall appraise or have appraised all tidelands that may be sold. The appraisal shall be the fair market value thereof, exclusive of any value occurring from improvements or development, such as fill material, buildings or structures thereon, by such occupant or his successor in interest or reflecting equities of the occupant.

**11 AAC 62.660. Additional lands.** Repealed 8/19/77.

**11 AAC 62.670. Loss of preference rights.** Repealed 8/19/77.

**11 AAC 62.680. Payment and conveyance of title.** (a) The applicant has the option of buying the land outright for the total amount of the appraised value in order to immediately receive title, or entering into a land sale contract in order to purchase the land over an extended period. (b) If the purchaser elects to buy the land outright, payment shall be by cash and/or certified and/or cashiers check and/or money order, and all checks shall be payable to the State of Alaska, Department of Revenue, and the director or his representative shall immediately issue a receipt containing a description of the tidelands purchased, the price, and terms of sale, which receipt shall be acknowledged in writing by the purchaser. (c) A person purchasing land under a land sale contract shall pay the principal sum remaining after the minimum down payment in annual installments as specified in the contract. Interest must be charged on all land sale contracts on unpaid balances in accordance with [AS 38.05.065](#). (d) The director, with the consent of the commissioner, may also impose such conditions, limitations, and terms as he deems necessary and proper to protect the interest of the state. Violations of any provisions of this Act or the terms of the contract of sale shall subject the purchaser to appropriate legal action, including but not limited to, cancellation of the contract in accordance with

applicable Alaska Law. (e) When the terms of the contract are fulfilled, the director shall issue the appropriate title documents.

**11 AAC 62.690. Non-preference right tidelands.** When in the best interest of the state, the director may grant leases or permits for the use of state owned tidelands.

**11 AAC 62.700. Leasing.** State owned tide and submerged lands shall be leased pursuant to ch. 58 of this title. In addition to the requirements set forth in ch. 58 of this title, the applicant shall submit a development plan that shall state (1) the purpose of the proposed construction or improvement; (2) the type of construction; and (3) the date construction will begin and estimated date of completion.

**11 AAC 62.710. Tidelands permits.** Repealed 8/19/77.

**11 AAC 62.720. Application for tideland permits.** Repealed.

**11 AAC 62.730. Restrictions and requirements.** Repealed.

**11 AAC 62.740. Plat of survey.** Repealed.

**11 AAC 62.750. Bond.** Repealed.

**11 AAC 62.760. Deviation of plans.** Repealed.

**11 AAC 62.770. Responsibility.** Repealed.

**11 AAC 62.780. Duration.** Repealed.

**11 AAC 62.790. Renewal of permit.** Repealed.

**11 AAC 62.800. Removal or reversion of improvements upon termination of permit.** Repealed 8/19/77.

**11 AAC 62.810. Tideland right-of-way and/or easement permits.** Repealed 8/19/77.

**11 AAC 62.820. Limited personal use permit.** Repealed.

**11 AAC 62.830. Application for limited personal use permit.** Repealed.

**11 AAC 62.840. Definitions.** In these regulations the following terms shall have the meaning indicated unless the context clearly requires a different meaning: (1) "Act" means the Alaska Land Act, [AS 38.05](#); (2) "commissioner" means the Commissioner of the Department of Natural Resources of Alaska; (3) "director" means the Director of the Division of Lands of the Department of Natural Resources; (4) "division" means the Division of Lands within the Department of Natural Resources. Administrative powers and other delegated duties as prescribed by law or regulations are vested in the director; (5) "filing hours" are the hours between 10:00 a.m. and 3:00 p.m. on business days, which are Mondays through Fridays, except holidays; (6) "land" means all tide and submerged lands under the jurisdiction of the division; (7) "lease" means a lease issued or held pursuant to chs. 58, 64 and 80 of this title; (8) "order" means a determination made by the director or the commissioner in accordance with authority lawfully vested in him, issued in writing, filed in the permanent files of the division, posted in a conspicuous place in the offices of the division, and made continuously available for inspection by the public; (9) "section" means a section of these regulations; (10) "part" means a part of these regulations; (11) "person" means any person, firm, corporation, cooperative association, partnership or other entity legally capable of owning land or an interest therein; (12) "occupant" means any person as defined herein, or his successor in interest, who actually occupied for any business, residential, or other beneficial

purpose, tidelands, or tidelands and submerged lands contiguous thereto, within the state, on or prior to January 3, 1959, with substantial permanent improvements. The holder of a permit of clearance in respect to interference of navigation, or of a special use permit from a government agency will not qualify as an "occupant" unless such entry on the land had, through exercise of reasonable diligence, resulted in actual occupancy and substantial permanent improvements as hereinafter mentioned. No person shall be considered an occupant by reason of having (A) placed a fish trap in a position for operation or storage upon the tide, shore, or submerged land; (B) placed a setnet or piling therefor or any other device or facility for taking of fish; (C) placed pilings or dolphins for log storage or other moorage; (D) placed floats or vessels upon the tide, shore or submerged land; (E) placed telephone, power or other transmission facilities, roads, trails or other improvements not requiring exclusive use of possession of tide or contiguous submerged lands; or (F) claimed the land by virtue of some form of constructive occupancy. Where land is occupied by a person other than the owner of the improvements thereon, the owner of the improvements shall, for the purposes of this section, be considered the occupant of such lands; (13) "occupied or developed" means the actual use, control, and occupancy, but not necessarily residence, of the tide and contiguous submerged land by the establishment thereon of substantial permanent improvements; (14) "improvements" shall mean buildings, wharfs, piers, dry docks, and other similar types of structures permanently fixed to the tide or contiguous submerged lands that were constructed and/or maintained by the applicant for business, commercial, recreation, residential, or other beneficial uses or purposes. In no event shall fill be considered a permanent improvement when placed on the tidelands solely for the purposes of disposing of waste or spoils. However, fill material actually utilized for beneficial purposes by the applicant shall be considered a permanent improvement; (15) "fill" shall mean earth, gravel, rock, sand, or other similar materials placed upon tide or contiguous submerged lands for the purpose of elevating the lands for a specific useful purpose. The placement of earth, gravel, rock, sand, or other similar materials on tide or contiguous submerged land solely for the purpose of spoils disposal and thereafter abandoned and not used for any beneficial purpose shall not be considered fill; (16) "substantial permanent improvement" shall for these regulations have the same meaning as improvements defined in sec. 840(14); (17) "reclaimed or constructed tide or contiguous submerged lands" is here defined as those lands resulting by purposeful filling of tide or contiguous submerged lands; (18) "preference right," subject to the classifications thereof established hereafter, means and includes the right of an occupant to acquire by grant, purchase, or otherwise, at the election of the occupant, except as otherwise limited or prescribed in this Act, any tract or tracts of tideland, or tideland and submerged land contiguous thereto, occupied or developed by such occupant on and prior to January 3, 1959; (19) "Class I preference right." A Class I preference right shall be extended to persons who occupied and developed tide and contiguous submerged lands seaward of a surveyed townsite on and prior to September 7, 1957, after executing a waiver to the state of all rights such occupant may have had pursuant to Public Law 85-303. If the occupied and developed land is seaward of a municipal corporation, a waiver must also be made to the corporation. Upon execution of the waiver, such persons or their successor in interest, have the right to acquire such occupied and developed tide and contiguous submerged lands from the state or the municipality for a consideration not in excess of the cost of survey, transferring and conveying title. A Class I preference right shall also be extended to persons who occupied and developed tide and contiguous submerged lands not seaward of a surveyed townsite on and prior to September 7, 1957. Such persons, or their successor in interest, are not required to sign a waiver and shall have the right to acquire such occupied and developed tide and contiguous submerged land from the state for a consideration not in excess of the cost of survey, transferring and conveying title; (20) "Class II preference right." A Class II preference right shall be accorded to Class I preference right claimants who refuse to execute a waiver to the state or to the state and municipality of any rights such occupants may have acquired pursuant to Public Law 85-303. It shall be mandatory for such municipal corporation and the director to expeditiously honor the application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the Governor of the state maps showing the pierhead line established by the Corps of Engineers with respect to the tract so granted. Pierhead lines have not been established in Alaska, nor is the establishment of such lines probable in the foreseeable future. Therefore, the most expedient method of acquiring such lands occupied and developed seaward of a surveyed townsite on and prior to September 7, 1957, is by obtaining a Class I preference right; (21) "Class III preference right" shall mean the preference right extended to a person who occupied and developed tidelands after September 7, 1957, and who continued to occupy the same on January 3, 1959. Such persons, or their successor in interest, have the right to acquire

such occupied and developed tidelands for a consideration not in excess of the cost of appraisal, administering and transferring plus the appraised fair market value thereof, exclusive of any value occurring from improvements or development, such as fill material, building, or structures thereon; (22) "permit preference" is herein defined as that privilege of the upland owner to acquire first choice over other non-preference right claimants to a permit for like use and enjoyment of the state owned tide or contiguous submerged lands abutting his property; (23) "lease or permit preference." The holder of a valid Corps of Engineers Permit issued prior to November 15, 1959 may be accorded preference to a lease or permit by the state if justified in accordance with the policy of AS 38.05, as amended, and if in the best interest of Alaska. Such preference shall be subordinate to all other preferences recognized under this Act; (24) "upland owner" is herein defined as that owner whose upland property abuts the line of mean high tide; (25) "shore lands" means all lands which are covered by non-tidal waters that are navigable under the laws of the United States up to ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction; (26) "tidelands" means those lands which are periodically covered by tidal waters between the elevation of mean high and mean low tides; (27) "submerged lands" means those lands covered by tidal waters between the line of mean low water and seaward to a distance of three geographical miles or as may hereafter be properly claimed by the state; (28) "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters; (29) "mean high tide" at any place subject to tidal influence shall be interpreted as the tidal datum plane of the average of all the high tides as would be established by the U.S. Coast and Geodetic Survey. "Mean High Water Line" shall be interpreted as the intersection of the datum plane of mean high water with the shore; (30) (A) "mean lower water" at any place subject to tidal influence shall be interpreted as the tidal datum plane of the average of the low tides as would be established by the U.S. Coast and Geodetic Survey; (B) "mean lower low water" at any place subject to tidal influence shall be interpreted as the tidal datum plane of the average of the lower of the two low waters of each day as would be established by the U.S. Coast and Geodetic Survey; (31) "harbor line" is defined as that line fixed by the Secretary of the Army which is the limit to which piers, wharves, bulkheads, or other work may be extended in navigable waters without further authorization, Section 11, River & Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 404); (32) "pierhead line" is defined as a line fixed by the Corps of Engineers of the Department of Army that is parallel to existing line of mean low tide at such distance offshore from the line of mean low tide that said pierhead line shall encompass, to the landward, all stationary, manmade structures (but shall not encompass any part of breakwaters, bridges, or piers used for vessel dockage which part extends beyond such a parallel line marking the seaward extremity of other manmade structures) which were in existence as of February 1, 1957, to seaward of the particular townsite for which the pierhead line is being established, and shall encompass no more, Public Law 85-303 (71 Stat. 623) 1957; (33) "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, but does not include fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine, animal and plant life, or water power, or the use of water for the production of power; (34) "accretion" is defined as the gradual and imperceptible addition of new land to old by the natural deposition of sediments, i.e., sedimentation; (35) "monument" shall be as described in sec. 300(d); (36) "fair market value" is defined as the highest price, described in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used; (37) the singular number includes the plural; (38) the masculine gender includes the feminine and the neuter.