

MEMORANDUM

(Open Session Report)

State of Alaska Department of Law

to: Board of Agriculture and
Conservation

Division of Agriculture,
Department of Natural Resources

DATE: November 26, 2012

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for
December 5, 2012 BAC
meeting

FROM: Bob McFarlane
Assistant Attorney General
Commercial & Fair Business Section
Anchorage

PART 1: NON-CONFIDENTIAL MATTERS FOR OPEN MEETING SESSION

1. Valley Dairy: VDI has filed a request for reconsideration of the board's refusal to accept a modification of one of the terms of the forbearance agreement that was previously approved. The request is made pursuant to 11 AAC 39.820. The board needs to decide whether to grant or deny the request. If the request is granted, VDI and its attorney have conditionally agreed to waive formal notice of the hearing and procedures so that a hearing can be held immediately following this meeting. The board can decide whether to grant the request in executive session but the board should vote on the request in public session.

2. Robert Riddle right to farm case (Case Number 4FA-11-3117 CIV): There is no ruling on the motion for summary judgment yet but there has been a lot of activity since the last board meeting. The case has been reassigned from Judge Randy M. Olsen to Judge Bethany S. Harbison and a pretrial conference has been scheduled for March 12, 2013. With the change of judge it appears that this case will go on for several more months before there is a final resolution or settlement. I will continue to provide updates at future board meetings.

3. Hans Geier Chapter 13 case: The bankruptcy matter has been resolved. A loan status report will be provided in executive session.

PART 2: CONFIDENTIAL MATTERS FOR EXECUTIVE SESSION

Open Meetings Act – A.S. 44.62.310(b)¹
Attorney Client Privilege - Alaska Evidence Code §503(b)²
Board of Agriculture and Conservation Statutes³
ARLF Regulations⁴

1. **Loan status information to be discussed at meeting:** See separate confidential report regarding loan status and delinquencies. Discussion of loan status is confidential pursuant to 11 AAC 39.061.

2. **Valley Dairy Request for Reconsideration:** Legal advice to the board is protected by the attorney-client privilege. Additionally, financial documents submitted by Valley Dairy in connection with the request for reconsideration are confidential pursuant to 11 AAC 39.061.

¹ A motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session. A.S. §44.62.310(b).

² Section 503(b) of the Alaska Evidence Code states in relevant part: “A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client...”

³ AS 03.09.040 authorizes the board to classify some loan and marketing information confidential.

⁴ 11 AAC 39.061 makes most loan information confidential and 11 AAC 39.031(f) authorizes the board to meeting in executive session to consider loan applications.