

MEMORANDUM

(Open Session Report)

State of Alaska Department of Law

to: Board of Agriculture and
Conservation

Division of Agriculture,
Department of Natural Resources

DATE: May 1, 2013

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for May
10, 2013 BAC meeting

FROM: Bob McFarlane
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Anchorage

PART 1: NON-CONFIDENTIAL MATTERS FOR OPEN MEETING SESSION

1. House Bill 207. This bill was introduced by Rep. Feige at the close of the first session. The bill restructures the Board of Agriculture and moves the responsibility for agricultural loans to the Department of Commerce, Community and Economic Development (DCCED). Under this bill the Board of Agriculture and Conservation would act in an advisory capacity for certain agricultural matters but would not be responsible for approving agricultural loans.¹ A copy of the bill is provided in the board packet. There are also changes to the Soil and Water Conservation District statutes at AS §41.10. The bill eliminates the Natural Resources Conservation Development Board (NRCDB) and turns those functions over to the BAC.² I'm not yet sure how this bill would affect the Alaska Association of Conservation Districts (AACD) and I would appreciate any input SWCD members might have on this issue. I encourage the board members to become familiar with this bill and to contact Rep. Feige's office with any comments or concerns you have.

2. Mat-Maid Property Sale. The City of Palmer and its attorney continue to seek a cost effective solution to resolving potential environmental issues at the Mat Maid property. On Monday, May 6, 2013 an environmental consultant will be arriving from Seattle to meet with the interested parties to help resolve these issues. I will also be meeting with the consultant and I will try to have an update for the board at the BAC meeting.

¹ See section 9 of the bill adding new section AS §03.10.025

² See section 34 of the bill eliminating the NRCDB and substituting the BAC in its place.

3. Lanser v. Riddle – right to farm litigation. Mr. Lanser and Mr. Riddle have each filed motions for summary judgment on the nuisance issue. In a nutshell, Mr. Lanser contends that Mr. Riddle’s farm operation is a public and private nuisance because of the odors. Mr. Riddle contends that it is not a nuisance, that he has complied with all applicable laws, and that his farming operation is protected by the right to farm statute at AS 09.45.235. The parties have recently filed hundreds of pages of legal briefs and exhibits with the court, with the most recent filing being made just two days ago. The briefing has been extensive and the attorneys on both sides have done an excellent job arguing the legal issues for their respective clients. There’s no way to tell when the court may rule on these motions, or whether the motions will dispose of all, or only part of the issues. I will continue to monitor the case and provide periodic updates when there are significant developments.

PART 2: CONFIDENTIAL MATTERS FOR EXECUTIVE SESSION

Open Meetings Act – A.S. 44.62.310(b)³
Attorney Client Privilege - Alaska Evidence Code §503(b)⁴
Board of Agriculture and Conservation Statutes⁵
ARLF Regulations⁶

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

³ 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).

⁴ 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...”

⁵ AS 03.09.040 authorizes the board to classify some loan and marketing information confidential.

⁶ 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.