

MEMORANDUM

(Open Session Report)

State of Alaska

Department of Law

TO: Board of Agriculture and
Conservation

DATE: October 8, 2012

Division of Agriculture,
Department of Natural Resources

FILE NO.: BAC general

TEL. NO.: (907) 269-3039

SUBJECT: AAG report for
October 17, 2012 BAC
meeting

FROM: Bob McFarlane
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Anchorage

PART 1: NON CONFIDENTIAL MATTERS FOR OPEN MEETING SESSION

1. **Agricultural Investors, LLC:** Agricultural Investors, LLC cured the default on the first and second deeds of trust (through August, 2012) and the foreclosure has been terminated. Hank Bartos has advised me that Mid State Meats, LLC intends to purchase the property and Amanda has provided Hank with the information necessary to prepare an application to purchase the property.

2. **Creamery Corporation:** The Creamery Corporation has finally been dissolved by the Division of Corporations. The effective date of dissolution is August 9, 2012. Attached is a copy of the certificate of dissolution.

3. **Valley Dairy:** VDI has not yet signed the forbearance agreement but a few minor revisions are being made and I expect it to be signed before the board meeting. I will provide the board with a status update and copies at the meeting.

4. **Alaska Supreme Court Ruling on Foreclosures:** When I began foreclosure proceedings against the Hartmans in 2010, I was unable to demand payment of the costs and attorney's fees of the foreclosure as part of the cure amount because the Alaska Superior Court ruled, (just prior to the scheduled foreclosure sale), that such costs and fees could not be collected as a condition of stopping a foreclosure. (That case was Bachmeier v. Alaska Trustee, LLC et al - Case number 3AN-09-08695 CI). Instead of collecting the costs and fees associated up front as part of the cure amount we were

forced to add those costs to the outstanding loan balance. Now, in a new development, the Alaska Supreme Court has ruled that foreclosure costs and attorney fees can be collected up front as part of the cure amount. (Kuretich v. Alaska Trustee, LLC, (Supreme Court No. S-14196 dated 9/14/2012). This latest ruling reinstates the long standing Alaska practice of requiring a defaulting borrower to pay fees and costs of the foreclosure (as well as past due principal and interest) up front as a condition of stopping a foreclosure sale. As a result of the Kuretich ruling I reviewed and made a few revisions to the standard ARLF deed of trust which should help eliminate any disputes about which costs are collectible by ARLF when a loan goes to foreclosure.

5. Robert Riddle right to farm case (Case Number 4FA-11-3117 CIV): Mr. Riddle has filed a motion for summary judgment in the Lancer vs. Riddle right to farm case. The court previously handed Mr. Riddle a victory on his argument that AS 09.45.235 protected his farming operation from claims that it was a private nuisance. However, the court did not rule on the issues of public nuisance and negligence. Mr. Riddle is now attempting to dispose of those remaining issues on summary judgment. Barring some unusual delay I would expect to see a ruling on this motion before the end of November. I will continue to provide the board with updates at future board meetings.

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.

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.