




**EAST BAY REGIONAL PARK DISTRICT
BOARD OF DIRECTORS MEETING
AGENDA STAFF REPORT**

DATE	March 19, 2024
TITLE	Approval of Borel Accounting and Authority to Disburse Property Sale Proceeds Following Close of Escrow
DIVISION	General Manager's Office and Finance & Management Services
FROM	Jason Rosenberg, Assistant General Counsel Deborah Spaulding, Assistant General Manager of Finance & Management Services/CFO
APPROVED	Sabrina Landreth, General Manager 

RECOMMENDATION

The General Manager recommends that the Board of Directors approve the East Bay Regional Park District's accounting related to the sale of the Borel property and authorize staff to disburse the net sale proceeds following close of escrow.

BACKGROUND

Armand Borel bequeathed his 17-acre Danville homestead and walnut orchard to the East Bay Regional Park District (Park District) with the desire that the property be preserved as an agricultural park where the public could learn about the agricultural history of the San Ramon Valley. Mr. Borel passed away in 2009. The Borel Trust faced significant challenges, including malfeasance by the first Trustee and insolvency. To keep the Trust solvent, the Park District loaned the Trust over \$1.5 million to cure defaults and cover other expenses. In addition, to prevent a foreclosure on the property, the Park District also assumed a promissory note and deed of trust, long in default, of approximately \$1.55 million. In addition, the court approved claims against the Trust which included attorneys' fees and interest third parties that were associated with the Trust's prior dealings. The total outstanding loans and claims against the Trust, not including interest, are approximately \$4.3 million. The Park District accepted the bequest of the property with the understanding that a sale of a portion of the property would be necessary in order to pay off debts of the Trust and to fund the development of the agricultural park.

In March 2019, the court authorized the Park District to sell the northerly 7± acres of the Borel property in order to pay creditors of the Borel Trust in full and found the sale to be consistent with Mr. Borel's testamentary intent. At its July 16, 2019 meeting, the Board of Directors adopted Resolution No. 2019-07-188 which authorized the issuance of a Request for Proposals for the purchase of the northern 7± acres of the former Borel property. At its May 4, 2021 meeting, the Board adopted Resolution No. 2021-05-120 which authorized the General Manager to execute a Purchase and Sale Agreement ("PSA") with Trumark for the sale of the northern 7.28 acres of the Borel property ("Sale Parcel"). The PSA, as amended, provides for a purchase price of \$32,000,000 for Trumark's purchase of the Sale Parcel. The PSA also provides that Trumark will cooperate with the Park District's creation of a Mello-Roos Community Facilities District to provide funding for the

maintenance and operation of the future Agricultural Park planned for the 10.16± acres including the Borel ranch compound that will be retained by the Park District.

When the Board of Directors approved the PSA at its May 4, 2021 meeting, it also authorized the General Manager to execute a grant deed and transfer the Sale Parcel to Trumark. Resolution 2021-05-120 also directed staff, that prior to the close of escrow, staff was to perform a full accounting of the Park District's loans, expenses, and accrued interest and seek Board authorization to repay these debts. The court-approved outstanding third-party claims against the Trust totaled approximately \$444,655 plus accrued interest. The Board's May 2021 action approving the PSA authorized the Park District to pay off all third-party claims from the \$500,000 deposit that was provided by Trumark under the terms of the PSA. Additionally, Resolution 2021-05-120 resolved that after all outstanding debts against the Borel Trust have been paid, the net sales proceeds shall be deposited into a restricted account that will be established to fund the development of the future agricultural park.

ANALYSIS

Trumark is now ready to close escrow and take title to the Sale Parcel. Accordingly, an accounting of the outstanding debts is timely.

Park District Loans and Costs Related to Borel Trust

- In 2012, the Park District loaned \$700,000 to the Trust, at 10% simple interest. Accrued interest on December 31, 2023, totaled \$793,333.
- In 2013, the Park District loaned \$99,959, and in 2014 issued two loans that equal \$32,000 (\$20,000 and \$12,000), to the trustees to continue the administration of the Trust without defaulting on current obligations. These loans all had a 10% simple interest per annum. Accrued interest on December 31, 2023, totaled \$136,207.
- In 2013 the Park District purchased a \$1.4 million Promissory Note and related fees and interest for a total amount of \$1,500,407, which was a liability of the Trust, from the lender. The original interest rate of 11.35% increased to 17.35% and is calculated at 30/360 simple interest per annum. Accrued interest and late payment penalty as of December 31, 2023, totaled \$2,716,432.
- In 2014, the Park District loaned an additional \$700,000, at 10% simple interest to the trustees. Accrued interest on December 31, 2023, totaled \$665,000.
- On February 9, 2017, the Park District was awarded attorney's fees and costs incurred in defending the estate from challenges in the amount of \$1,087,014. Further on March 21, 2019, the Park District was awarded additional attorney's fees and costs in the amount of \$181,422. California Code of Civil Procedure Section 685.010(a) provides interest at the rate of 10 percent per annum on any principal amount of a money judgment that is unpaid. Accordingly, accrued interest on the unpaid attorneys' fees awards as of December 31, 2023 totaled \$922,896.

FISCAL IMPACT

The loans and interests stated above are amounts that the Park District loaned to the Trust with the understanding that those amounts would be repaid prior to the distribution of the net sales proceeds into an account designated for the development of an agricultural park.

Pursuant to the terms of the PSA, Trumark has already provided the Park District with approximately \$1.8 million dollars in nonrefundable deposits. Absent the approximate \$500,000 that was used to pay off all third-party debts, the balance of the nonrefundable deposits remains in escrow in an interest-bearing account. Upon transfer of the property, \$31,500,000 remains in escrow ready to be distributed to the Park District.

Based on the accounting above, Park District staff recommends that \$9,534,669 be reimbursed to the Park District to repay loans and awarded funds, and the remaining \$21,965,330 net sales proceeds be deposited into a new special revenue fund to be used for the development of an agricultural park.

ATTACHMENTS

None.



**EAST BAY REGIONAL PARK DISTRICT
RESOLUTION NO. 2024 – 03-
MARCH 19, 2024**

**APPROVAL OF BOREL ACCOUNTING AND AUTHORITY TO DISBURSE
PROPERTY SALE PROCEEDS ACCORDINGLY**

WHEREAS, by its Resolution No. 2019 – 07 – 188 adopted on July 16, 2019 (“Resolution Authorizing RFP”), the East Bay Regional Park District (“Park District”) Board of Directors (“Board”) authorized the issuance of a Request for Proposals (“RFP”) for the purchase of the northerly 7± acres of the Park District’s Borel property located at 3020 Fostoria Way (“Sale Parcel”); and

WHEREAS, by its Resolution No. 2021-05-120 adopted on May 4, 2021, the Board authorized a Purchase and Sale Agreement with Trumark Properties, Inc. (“Trumark”) for the sale of the Sale Parcel at a purchase price of \$32,000,000; and

WHEREAS, since the approval of the PSA, the Park District and Trumark have entered into three amendments to the PSA to facilitate the approval of the entitlements by the Town of Danville for the Sale Parcel; and

WHEREAS, the Park District and Trumark are ready to close escrow and the Park District seeks to perform an accounting of the outstanding loans associated with the Armand Borel Trust and the Borel Property.

NOW, THEREFORE BE IT RESOLVED, that the Board of Directors of the East Bay Regional Park District hereby authorizes the General Manager to close the escrow account returning \$9,534,669 to reimburse the Park District for loans and interest owed and awarded funds; and

BE IT FURTHER RESOLVED that, concurrent with the satisfaction of outstanding debts and loans, the Board of Directors of the East Bay Regional Park District hereby authorizes the General Manager to execute any documents necessary to demonstrate satisfaction of those debts and loans; and

BE IT FURTHER RESOLVED that, following the satisfaction of outstanding debts and loans, the Board of Directors of the East Bay Regional Park District hereby authorizes the General Manager to deposit \$21,965,330, the net sale proceeds, into a new Special Revenue Fund to be used for the development of an agricultural park; and

BE IT FURTHER RESOLVED, that the Assistant General Manager of Finance & Management Services/ CFO is hereby authorized to complete accounting entries as part of the year-end audit in 2024 necessary to carry out the intentions of this resolution.

BE IT FURTHER RESOLVED, that the General Manager is hereby authorized and directed, on behalf of the Park District and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

Moved by Director _____, and seconded by Director _____, and adopted March 19, 2024, by the following vote:

FOR:

AGAINST:

ABSTAIN:

ABSENT: