



Board Agenda Item 9

DATE: May 17, 2022

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director, Department of Public Works and Planning
Robert W. Bash, Director, Internal Services/Chief Information Officer

SUBJECT: Proposed Repayment Plan for Past Due Rent Owed by Batth Ranch, Inc.

RECOMMENDED ACTION(S):

Consider and take action on the following options related to the past-due rent owed by Batth Ranch, Inc. for the periods of October 1, 2020 through March 31, 2022 (\$103,344) for Lease Agreement No. 10-443 for 320 acres of County-owned farmland located on West American Avenue to the east of the American Avenue Landfill:

1. Deny the proposed request from Batth Ranch, Inc., to pay past-due rent in five equal annual installments during 2022 and 2026, pursuant to staff's recommendation; or
2. Approve the proposed request from Batth Ranch, Inc., to pay past-due rent in five equal annual installments during 2022 and 2026; or
 - a. Direct staff to prepare a First Amendment to the Lease Agreement with Batth Ranch, Inc., with the past-due rent to be paid in five equal annual installments during 2022 and 2026 (\$103,344);
 - b. Authorize the Director of Internal Services/Chief Information Officer, subject to review and approval by County Counsel as to legal form, and the Auditor-Controller/Treasurer-Tax Collector as to accounting form, to approve and execute a First Amendment to the Lease Agreement with Batth Ranch, Inc.; and,
 - c. Direct staff to include in the proposed First Amendment:
 - i. (1) an acceleration clause of all past-due amounts, and any then-currently due amounts, immediately payable on the event of any default in any payment under the repayment plan; and; (2) a contractual commitment that Batth Ranch, Inc., will not allow any lien by a third party against any of the crops grown on the County-owned farmland located on West American Avenue to the east of the American Avenue Landfill; and,
 - ii. The First Amendment must be entered into by the County and Batth Ranch, Inc. no later than May 31, 2022.
 - d. Order the termination of the Lease Agreement with Batth Ranch, Inc., effective June 1, 2022, if Batth Ranch, Inc., does not enter the First Amendment prepared by staff by

May 31, 2022; or

- 3. Deny the proposed request from Batth Ranch, Inc. to pay past-due rent in five equal annual installments during 2022 and 2026, and approve a payment plan proposed by staff to require repayment in full of the past-due rent (\$103,344) on or before August 31, 2022; or**
 - a. Direct staff to prepare a First Amendment to the Lease Agreement with Batth Ranch, Inc., to require repayment in full of the past-due rent (\$103,344) on or before August 31, 2022;**
 - b. Authorize the Director of Internal Services/Chief Information Officer, subject to review and approval by County Counsel as to legal form, and the Auditor-Controller/Treasurer-Tax Collector as to accounting form, to approve and execute a First Amendment to the Lease Agreement with Batth Ranch, Inc.; and,**
 - c. Direct staff to include in the proposed First Amendment:**
 - i. (1) an acceleration clause of all past-due amounts, and any then-currently due amounts, immediately payable on the event of any default in any payment under the repayment plan; and (2) a contractual commitment that Batth Ranch, Inc., will not allow any lien by a third party against any of the crops grown on the County-owned farmland located on West American Avenue to the east of the American Avenue Landfill; and,**
 - ii. The First Amendment must be entered into by the County and Batth Ranch, Inc. no later than May 31, 2022.**
 - d. Order the termination of the Lease Agreement with Batth Ranch, Inc., effective June 1, 2022, if Batth Ranch, Inc., does not enter the First Amendment prepared by staff by May 31, 2022;**
- 4. Deny the proposed request from Batth Ranch, Inc. to pay past-due rent in five equal annual installments during 2022 and 2026, and deny staff's proposed payment plan, to require repayment in full of the past-due rent (\$103,344) on or before August 31, 2022, and allow the Lease to terminate, effective May 19, 2022, in accordance with the Notice of Material Breach, Demand for Payment of Rent Due, and Termination of the Lease issued to Batth Ranch, Inc. on April 19, 2022.**
 - a. Direct staff to retake possession of the County-owned farmland pursuant to the terms of the Lease; and**
 - b. Direct staff to collect all amounts owed under the Lease, including but not limited to authorization to initiate litigation to collect the amounts owed.**

On March 30, 2022, Batth Ranch, Inc., (Batth Ranch) provided the proposed repayment plan included as Attachment A. The proposed repayment plan requests that the delinquent balance of \$103,344 for the lease period of October 1, 2020 through March 31, 2022 be paid in five equal annual installments of \$20,668.80, and payments would be made on or before December 31 of each year, for five years (2022 - 2026). Batth Ranch represented that the third quarter payment (April, May, and June) and all subsequent payments would resume as scheduled. However, the third quarter payment that was due March 31, 2022, was not received by the County until May 10, 2022. County staff recommends that your Board deny Batth Ranch's proposed

repayment plan. The Internal Services Department (ISD) and Public Works and Planning (PWP) staff recommend that your Board deny the Batth Ranch proposal and require repayment in full on or before August 31, 2022. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

Your Board may choose to propose an alternative repayment plan, and if Batth Ranch agrees to that payment plan, the County would amend the Lease to reflect the updated terms. If a mutually acceptable repayment plan is not agreed upon, the Lease will terminate on May 19, 2022, in accordance with the Notice issued on April 19, 2022, due to non-payment as of September 30, 2020, and any past due amounts owed will be immediately due. In that case, ISD and PWP staff seek your Board's direction to retake possession of the County-owned farmland located on West American Avenue to the east of the American Avenue Landfill (Farmland), and collect the amounts owed.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action. Approval to amend the lease will result in the delinquent rent being brought current. If the repayment plan is not approved, the Lease will terminate on May 19, 2022, in accordance with the notice approved by your Board on March 22, 2022 and issued on April 19, 2022, due to material breach for non-payment, and a past-due amount totaling \$112,618.46 will be due immediately (\$103,344 for the delinquent lease period of October 1, 2020 through March 31, 2022), and the Department would determine whether a prorated refund is due to Batth Ranch for the remainder of the third quarter. If paid, the monies would be deposited in the PWP - American Avenue Disposal Site Org 9026, Subclass 15000, Account 3404.

DISCUSSION:

On August 24, 2010, the Board approved the Lease with Batth Ranch for 320 acres of Farmland. The Lease is for a 25-year term, commencing on October 1, 2010, and is being utilized for fruit and tree nut farming.

On March 22, 2022, your Board authorized the Director of Internal Services/Chief Information Officer to execute a written Notice of Material Breach, Demand for Payment of Rent Due, and Termination of the Lease, and requested that Batth Ranch present a proposed repayment plan to ISD and PWP staff for Board consideration. A representative from Batth Ranch was present and made comments at that meeting.

Pursuant to Section 4 of the Lease, the County may immediately terminate the Lease for cause if the Lessee has committed a material breach of the terms and has not corrected such breach within 30 days of receiving a written notice of material breach of the agreement.

On April 19, 2022, ISD and PWP staff served the written Notice of Material Breach approved by your Board on March 22, 2022, on Batth Ranch in accordance with Section 17 - NOTICES, of the Lease. If the rents are not brought current within 30 days of the issuance of the Notice, the Lease will terminate on May 19, 2022. Upon termination, the County may take action to recoup the outstanding balance of past-due rents.

The representative for Batth Ranch informed ISD and PWP staff on March 30, 2022 that she would be out of the country, and would not return until April 28, 2022; as a result the proposed repayment plan from Batth Ranch was delayed.

The repayment plan from Batth Ranch proposes that the past-due balance be paid in five equal annual installments of \$20,668.80 and payments would be made on or before December 31 of each year, after the crop is harvested and sold. The first annual installment would be due by December 31, 2022, and the last by December 31, 2026. Batth Ranch represents that the third quarter payment (April May June) and all subsequent payments resume as scheduled. However, the third quarter payment was due by March 31, 2022, but payment was not received until May 10, 2022.

With your Board's denial of the proposed repayment plan from Batth Ranch and direction that the payment of past-due rents be made in full on or before August 31, 2022, the Lease must be amended to memorialize the terms of the repayment plan.

If your Board approves action items 2 or 3, those action items would direct ISD and PWP staff to prepare a First Amendment to formalize the terms of the repayment plan and incorporate those terms into the Lease Agreement with Batth Ranch. ISD and PWP staff recommend that the amendment include an acceleration clause of all past-due amounts and any then-currently due amounts, immediately payable in the event of any default in any payment under the repayment plan, as well as a contractual commitment that Batth Ranch will not allow any lien by a third party against any of the crops grown on the Farmland. In addition, approval would delegate authority to the Director of Internal Services/Chief Information Officer to approve and execute a First Amendment to the Lease Agreement with Batth Ranch with the agreed-upon repayment plan terms, so that amendment would not have to return to your Board for approval and execution.

REFERENCE MATERIAL:

BAI #48, March 22, 2022

BAI #32, August 24, 2010

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A - Batth Ranch Proposal

On file with Clerk - Notice issued on April 19, 2022 - H. Batth

On file with Clerk - Notice issued on April 19, 2022 - G. Batth

CAO ANALYST:

Sonia M. De La Rosa