



BRISBANE CITY COUNCIL  
SUMMARY MINUTES

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**SPECIAL MEETING TO DISCUSS THE BAYLANDS**  
**THURSDAY, JULY 13, 2017**  
BRISBANE CITY HALL, 50 PARK PLACE, BRISBANE

**7:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE**

Mayor Liu called the meeting to order at 7:35 p.m. and led the flag salute.

**ROLL CALL**

Councilmembers present: Conway, Davis, Lentz, O'Connell, and Mayor Liu  
Councilmembers absent: None  
Staff present: City Manager Holstine, City Clerk Padilla, Director Schillinger,  
Special Counsel Sohagi

**ADOPTION OF AGENDA**

CM Conway made a motion, seconded by CM Lentz, to adopt the agenda. The motion was approved 5-0.

**OLD BUSINESS**

A. Brisbane Baylands Planning Applications (Baylands Concept Plans, Brisbane Baylands Specific Plan Case SP-01-06, General Plan Amendment Cases GP-01-06/GP-01-10) and related Final Environmental Impact Report (SCH##2006022136). Universal Paragon Corporation, applicant; Owners: various; APN: various.

1. Staff Presentation including an update on requests for data and response to questions

Lloyd Zola, of Metis Environmental Group, gave the staff presentation [Note: [the staff presentation is available here on the City's website.](#)]

CM Conway asked for clarification on the discussion topics on July 24 and August 7.

Mr. Zola said the Council would start discussing the mix of land uses on July 24, and should be prepared to give direction on August 7.

## 2. Council Deliberations--Basic Planning and Environmental Principles for future Baylands development

CM Lentz asked if the focus should be on providing direction on what issues need to be resolved rather than how those issues should be resolved.

Mr. Zola stated the Council should determine the desired outcome, but did not necessarily need to tell the applicant how to achieve that outcome. He used the Sustainability Framework as an example, which identifies the City's desired procedures for the remediation process.

CM Lentz asked how the Planning Commission started their dialogue on the application.

Mr. Zola said the Planning Commission started by asking questions, getting answers, and then identifying basic principles and outcomes that they desired.

CM Lentz asked if the Council should agree on goals.

Mr. Zola said the Council should think of the most important principle regardless of the outcome.

Mayor Liu referenced a report by BioRegional commissioned by the applicant reviewing and analyzing the applicant's proposal and alternatives through the lens of the One Planet Living principles. She asked for a future presentation of the report by the author, which she found helpful.

Mr. Zola said that request would be made.

CM Davis said the most important principle to her at this time was for a safe project.

CM Lentz agreed. He said the Council had discussed hiring Dr. G. Fred Lee as a consultant to advise the City during the remediation planning process.

CM Davis said secondarily she wanted to see an outcome that respects the City's small-town feel and felt like a part of the City. She wasn't sure what shape that would take yet.

CM Conway said most City Council members want to maintain Brisbane's small-town character. He said what that means might be subject to different interpretations. The Council would be remiss to think safety was not one of the highest guiding principles, regardless of what land uses are approved. He said a land use must be approved first before safety can be evaluated.

CM O'Connell agreed that safety is very important. Ensuring the EIR is adequate was a high priority for her because that's how they would base the acceptable risks. She noted most studies were dated in 2010 and she wondered how the EIR would keep up with the information that comes in the future. She did not like the use of the words "when feasible" and "if appropriate" in the EIR. She said the EIR will drive most of her decisions as to what is appropriate.

CM Lentz said whatever was decided should be flexible to consider staging of the project.

CM O'Connell said she needed more information on the EIR adequacy prior to identifying goals and priorities.

CM Lentz said they have the applicant's proposal and Planning Commission's recommendation. The Council can identify issues that are missing from the EIR or ask for more robust study. He said the EIR didn't fully explore the potential for a multi-modal transit station to alleviate traffic congestion. He asked Mr. Zola if the Council should identify topics for additional analysis.

Mr. Zola said analyzing a more robust multi-modal station would be outside of the project description. As the Council starts looking at the plan they want to see for the Baylands and the General Plan policies they want, if a more robust multi-modal station was part of that, the Council should describe the vision for that station and the policies they would want. Before they take action, they would need to review the EIR to determine whether it addresses the project the Council wants to approve. On a 30-year buildout, it was important to consider the age of the baseline. The Council could adopt a General Plan policy to update baseline studies over time.

CM O'Connell said many of the studies in the EIR are over 20 years old and that was a concern.

Mayor Liu said the BioRegional report recommended looking at the project from a planetary perspective. Whatever project is approved should not increase carbon emissions and should have lower carbon emissions and the biggest environmental benefit. She wanted a project that would not increase traffic congestion or carbon emissions locally and regionally. Remediation and site safety was very important. She was interested in incorporating the Baylands development into Brisbane.

CM Lentz agreed with Mayor Liu. He stated his goals were environmental sustainability and reducing carbon emissions. He referenced the complexity of the project and said the Sustainability Framework gave him a good foundation for the project review, and appreciated its development with input from all City advisory groups. He wanted BioRegional to do a presentation incorporating the Sustainability Framework.

CM Conway said the Sustainability Framework was not a driving force for land use. He said land use would be based on values, and people have differing values. He said in his tenure, he saw Council people who wanted to do the right thing but weren't value-driven in terms of making decisions for the City.

CM Lentz agreed that the Sustainability Framework was not a plan. The subcommittee that created it looked at sustainability principles recognized worldwide. It was up to the community and Council to say whether the Framework represents their values and how to use it to make decisions in the planning process.

CM O'Connell said she had not yet reviewed the applicant's report from BioRegional. She would review it but it would not be part of the driving force of the conversation at the night's hearing. She appreciated the speaker series at which many people commented that businesses can be green and net zero energy. Using One Planet Living as a model for the Sustainability Framework did not necessarily include land use. One Planet Living had been hired by the developer which she saw as a conflict.

CM Lentz agreed it was awkward that the applicant paid for the report from One Planet Living.

Mayor Liu said the document seemed to be objective in its application of the Sustainability Framework to the project and other alternatives. It did not recommend any one option.

CM O'Connell said she was happy to read and consider it but BioRegional was now a consultant of the applicant.

CM Lentz disagreed with CM O'Connell's statement and thought it would be helpful in the process.

CM Conway said the Council had to come to a decision on what they were comfortable with in terms of land use. There was a mountain of questions that would take years to review if they have no land use direction.

CM Davis said she thought that would occur on August 7. She asked for clarity on their deliberation topic at the evening's hearing.

CM Lentz said he wrote his goal list prior to the staff report being released. He reviewed his list of goals and supporting materials briefly (Note: CM Lentz's goals are included in [Attachment A to the staff report](#).) He suggested breaking up the land use discussion into subareas. He noticed many Council members' questions were geared towards making sure the site is something for the City to be proud of and stands the test of time regarding safety and City resources.

CM Conway said CM Lentz touched on land uses in his goals.

CM Lentz said CM Conway had as well in terms of Recology and Golden State Lumber.

CM Conway said he was ready to roll with the land use discussion

CM Lentz said he wanted to discuss the overall goals.

CM Davis said CM Lentz had mentioned several times that his goal was to have the most sustainable project possible, but she was concerned because many housing advocates have said that a sustainable project must include housing. She doesn't want to be contradictory and sees that as a potential point of controversy. She wants a sustainable project but one that fits the community's values. She doesn't want to agree to a stringent goal that puts the City on one path that might dictate land use.

CM Lentz said his goals just represented his opinions, not the entire Council's.

CM Davis said she was open to absorb information from every speaker. She thought it would be valuable to hear from One Planet Living in a presentation and evaluate the information.

Mayor Liu said the issue should be looked at from the environmental lens to consider whether the desired land uses meets the criteria for sustainability, such as impacts on carbon emissions.

CM Davis said she didn't have the opportunity to read the BioRegional document prior to the meeting submitted by the applicant, but she was willing to hear a presentation and would read the document.

CM Conway agreed that reading the report was valuable but he didn't see the need for a presentation. He said he was ready to discuss what land uses he was comfortable with. He appreciated CM Lentz's goal list.

Mr. Zola said the goal for a high degree of sustainability could drive the mix of land uses. However, the Council could also decide the land uses they feel comfortable with that are appropriate for the Baylands, then develop the most sustainable project possible based on those land uses. He said transit-orientation as a principle would mean development should be centered around the Caltrain station, and could influence the type and intensity of land uses as well. That's why it was important for the Council to define its overarching principles.

CM Davis said she was not ready to get into that discussion now as she had outstanding questions which would determine how she feels about residential. She wanted to have all the information possible to make an informed decision.

Mayor Liu suggested staff provide a high level presentation of the BioRegional report in a future staff report. She wanted it to be available to the public for review.

Mr. Zola said it would be more productive to discuss a presentation once the Council had reviewed the report. He said the sustainability issue did not need to be discussed until the outstanding questions have been answered. He asked the Council to ask if there were any principles in the staff report they disagreed with.

CM O'Connell said the principles laid out in the staff report were good for the basis of the discussion. She wanted to follow up with the sustainability conversation. She said it was important that the Council agree on appropriate land uses before building sustainability into it rather than sustainability forcing the Council to make a decision that doesn't meet their goals.

CM Lentz asked if having a zero-carbon footprint was part of the principles in the staff report.

Mr. Zola clarified that the elements of the Sustainability Framework were referenced in the staff report.

CM Conway said he had no issues with the principles in the staff report.

CM Davis indicated she was good with the principles as written in the staff report. She said it sounded like land use discussion would commence at the next meeting, assuming the outstanding answers to the Council's questions were provided. She asked when the BioRegional presentation would be made.

City Manager Holstine said a presentation from BioRegional would not occur at the next meeting.

Mayor Liu asked staff to follow-up with BioRegional on availability.

CM O'Connell asked if Council would receive the answers to their questions at the July 24 meeting. She asked how much lead time the Council would have to review the materials and what date they would be available in writing.

City Manager Holstine said the packet would be available the Thursday prior to the July 24 meeting. He said he would review the timeline and get back to the Council.

CM O'Connell stated there was a study done by San Francisco about the multi-modal station that the Council should review. She asked it be put in the record.

City Manager Holstine said the study would be included in the response to Council questions. He said at the July 24 meeting, the answers to the Council's questions would be provided with supporting materials, which may generate additional questions. There would be an opportunity to respond to any new questions at that meeting.

### 3. Public Comment

Bill Dettmer, Brisbane resident, shared his experience talking to staff at the California Department of Toxic Substances Control regarding remediation and safety. He shared his experience with friends and family having difficulty affording housing and commuting distances to work. He said building more housing could soften the demand and lower rents and he was speaking for people who were facing eviction or losing their housing. He said building housing next to a train station was reasonable and sustainability came down to density. He said geotechnical engineers and the State agencies would ensure the site is safe which was his primary concern. He asked the Council to weigh the needs of people for housing. He said even if new units are expensive, there would be more housing and it would soften the demand and make people's lives better. He wants people to have better lives. He thanked the Council for their work.

David Crabbe advocated against "paralysis by analysis." He read from a letter he submitted to the Council. [Note: [Mr. Crabbe's letter is available on the City's website.](#)]

Jonathan Scharfman, representing the applicant, said plans that take the private property of one landowner to financially benefit another landowner violated the principle of private property rights. He said expanding the Recology facility as currently proposed would cut off access to the least served Caltrain station which conflicted with sustainability goals. He said the Sustainability Framework was based on the One Planet Living model created by BioRegional. UPC initially was not in favor of the Sustainability Framework as they were concerned that One Planet was not widely adopted in the US. However the applicant took the Council's action to heart and requested an analysis of all the project proposals so they could understand the implications of all the proposals. UPC expected the City to pay for that analysis. The analysis also looks at three additional development scenarios that go farther to achieving BioRegional's core pillars of sustainability. BioRegional's conclusion was that no individual proposal can reconcile

community needs, economic necessities and sustainability goals, the most sustainable and environmentally sound plan is one that contains the maximum amount of jobs and housing near transit. He invited the opportunity to work together with the Council to create a sustainable and inviting development.

Prem Lall, Brisbane resident, said there was a lawsuit ongoing over the Oakdale Irrigation District. The Oakdale groundwater alliance and others against the OID. He provided a newspaper article on the lawsuit. He said the OID is supposed to supply a significant portion of the water to any development of the Baylands and the case is dealing with whether the OID has the water it claims to have. He said OID does not and is selling water it doesn't have. He asked if residential development should be on a property that can't be served water. He sent other articles to the City Clerk and asked they be provided to the Council. He said many organizations that spoke in favor of housing on the Baylands were funded by UPC. He provided a screenshot of the Greenbelt Alliance thanking UPC for funding for an event. [Note: Mr. Lall's handouts are attached to these minutes.]

Leora Tanjuatco, Housing Leadership Council of San Mateo County, said the majority of their funding is from foundations and grant funding which outweighs money received from event sponsors. She encouraged the Council to review the HLC's financials. She advocated for including housing on the Baylands. She referred to an article discussing a decline in job growth in the Peninsula due to low housing supply. She said the scope of housing proposed by the developer would have a significant impact on the local housing supply. She shared a story of a woman who contacted her for assistance after getting a rent increase and supported increasing the housing supply.

Barbara Ebel, Brisbane resident, said transit oriented development could reduce congestion regionally it could increase congestion locally. She said the local impacts should not get lost. She said the carbon value of the multi-modal transit station is 64,000 metric tons of CO<sub>2</sub>e and she proposed they install that many panels if they don't build housing so they are at a net zero gain. She said housing should not be built on the Baylands if safety is a principle. She asked how much faith should be put in the experts. She shared recent data on deaths from air pollution across the country. She said the DEIR states a large number of Recology's employees live in Hercules. Even without development there they should provide transportation for employees who live in Hercules. She said shipping and warehousing industries are growing and retail is shrinking. She said the average home size in the 1950's was 1,000 square feet, and up to 2,000 square feet in the 1980's. She said the answer to the housing crisis was rezoning to turn mansions into duplexes to double populations within the same envelope. She said New Zealand has a reverse half lease where two homes are built on a lot and the tenants pay leases to each other. She said the project could not be made sustainable given the population of the Bay Area.

## **MAYOR/COUNCIL MATTERS**

### **A. City Council Schedule Concerning the Baylands Deliberations Process**

No changes were made to the Council schedule.

CM Lentz said he believed in the Council and community to put forth an amazing project.

## **WRITTEN COMMUNICATION**

A. Acknowledge receipt of written communications regarding the Brisbane Baylands Project

Mayor Liu acknowledged correspondence received since the last meeting from Mark Arsenault of Recology, Mae Swanbeck, David Crabbe, Gavin Hayes, Deb Horen, Lily Chen, Clara Johnson, UPC and Bioregional One Planet Living, Raymond Hodges, Eric Zhou, Judy Taylor, Chris Nelson, Ryan MacPhee, Nadine Makki, Adam Subia, Lisa Snyder, Brian Hoffer, Sandra Manning, Tony Verreos, and Steve Rodrigues and Josiane Emorine.

## **ADJOURNMENT**

CM Conway motioned and CM Lentz seconded to adjourn the meeting. The motion was approved 5-0 and the meeting adjourned at 9:47 p.m.

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Ingrid Padilla, City Clerk



# The Modesto Bee



April 10, 2017 12:04 PM

## OID loses hard-fought fallowing lawsuit

By Garth Stapley

[gstapley@modbee.com](mailto:gstapley@modbee.com)

In a key ruling released Monday, a judge slammed the Oakdale Irrigation District for skirting state law in last year's fallowing proposal.

The district should have studied whether shipping river water elsewhere might harm local groundwater levels, Stanislaus Superior Court Judge Roger Beauchesne said in a decision issued nearly 11 weeks after a one-day trial in [January](#).

"An (environmental impact report) must be prepared whenever there is substantial evidence that significant effects may occur," the judge ruled, "commanding" OID to reverse its board's March 2016 vote creating the fallowing program.

The OID board will discuss its options next week, General Manager Steve Knell said in an email. That presumably would occur in closed session and could feature appealing the decision.

Rather than producing a detailed – and more expensive – environmental impact report, the board majority approved what's called a negative declaration claiming simply that fallowing land and selling freed-up water south of the San Joaquin Delta would have no impact here. Beauchesne criticized that document as "a minimalistic work product which fails to meet the basic requirements of the law."

The fallowing program never got off the ground, prompted three board members to sue the other two, and figures in the attempted recall of board member Linda Santos scheduled to conclude April 25. Santos and board member Gail Altieri had voted against the negative declaration, saying they had no time to study associated documents provided to them just before the March 2016 vote.

OID had hoped to pay participants 20 percent of sales proceeds in cash; 75 percent would help upgrade equipment, saving water and helping the district comply with state law mandating water conservation, and the district would keep 5 percent.

Knell on Monday called the ruling "unfortunate" and predicted it would "add significant complexity and costs to farmers and irrigation districts on any project they wish to implement that has a potential to cause even the slightest of impacts."

Beauchesne sided with plaintiffs Robert Frobose, an OID customer, and Louis Brichetto, a former board member, in virtually all of their arguments against the stalled fallowing program, technically known as the On-Farm Water Conservation Program.

For example, **OID did not adequately describe current conditions – including groundwater, air quality or animal habitat – making it impossible to judge in the future how fallowing might affect those resources, the judge found.**

Someone trying to understand fallowing “would have difficulty” reading OID’s negative declaration, Beauchese found. Although proceeds might have helped pay for land leveling, replacing ditches and old pipelines with new pipes, installing tail-water reuse systems and replacing domestic wells, “the first mention of irrigation projects other than crop conversion appears in the appendix,” the judge wrote. That amounts to “a serious flaw in a supposed attempt to inform the public,” Beauchese found.

“Each of the criticisms of the negative declaration have merit, in the court’s view,” the judge said.

In [February](#), Knell said an environmental impact report accompanying a standard water transfer can cost as much as \$250,000 and take up to 18 months, while a negative declaration might take only a few weeks and cost as little as \$2,500.

The judge also criticized OID for insisting in court that fallowing was a one-year pilot project, while Knell was telling others of hopes for a five-year program.

In the January trial, Beauchese seemed unimpressed when an OID attorney accused Frobose and Brichetto of fighting the district to advance “their own personal interests.” At the time, the judge provided a definition for an ad hominem attack – assaulting someone’s character or motive to deflect attention when you have a weak case.

“Motive need not be proven in a criminal case or in a civil case,” the judge said in his recent ruling, dated April 3. “Either the lawsuit has merit or it does not.”

“We don’t agree with the judge nor his rationale,” Knell said.

Fallowing represents only one avenue for shopping OID water from the Stanislaus River.

**The district also has sold surplus water not reserved for customers, allowing OID to invest more than \$50 million in upgrades in the past decade. In recent years, the district has chosen to abandon water for buyers to pick up downstream; doing so allows OID to skip environmental review associated with standard water transfers. Santos has criticized abandonments, saying that they weaken the districts’ moral argument for retaining water rights coveted by others.**

Knell has said no water will be exported [this year](#) because federal officials are worried about the strain already on levees in and near the Delta from high river flows. They are expected to continue through summer as snow melts from record winter storms.

The fallow-for-money idea was set aside in 2015 when Brichetto threatened to sue. At the time, OID attorney Tim O’Laughlin warned that the district likely would lose if the matter ended up in court.

The same idea revived last year – again, without an EIR. Santos and Altieri frowned at the negative declaration but were outvoted by board members Steve Webb, Gary Osmundson and Herman Doornenbal. OID recruited farmers willing to idle 59 plots, but the program stalled when Brichetto sued, joined by Frobose in what they call the Oakdale Groundwater Alliance.

Santos and Altieri provided statements used by plaintiffs, noting that information provided to Santos and Altieri differed from that presented to a judge by an OID attorney. The board majority saw that as treason and sued to

keep the women from some closed-door sessions; they missed 14 weeks before a judge ruled [against OID](#), readmitting Santos and Altieri.

Santos' critics have cited her involvement in the following lawsuit as one reason for the [recall](#). Ballots have been mailed to absentee and mail-only voters making up 69 percent of Division 4; many already are voting. The rest can cast ballots before 8 p.m. April 25 at Life Community Church, 105 E. G St. in Oakdale.

Beauchesne said in his recent ruling that he will decide later, if asked, whether OID will pay attorneys' fees for Frobose and Brichetto.

Frobose and Brichetto said they were gratified by the ruling.

"We are pleased the court held OID accountable for analyzing and mitigating the impacts associated with selling water for use out of our area," Brichetto said. "We hope the ruling sends a strong message to the OID board that its actions must comply with state laws designed to protect the environment and local water supplies."

Garth Stapley: [209-578-2390](tel:209-578-2390)

Read more here: <http://www.modbee.com/news/local/oakdale/article143771084.html#storylink=cpy>

# The Valley Citizen

## Judge Calls Water District's Bluff: "It is not even close."

By  
[Eric Caine](#) – April 11, 2017

### False Advertising?

At one point during the conflict between the Oakdale Irrigation District (OID) and the Oakdale Groundwater Alliance (OGA), Judge Roger Beauchesne scolded OID attorneys for their use of *ad hominem* tactics, reminding them that personal attacks are usually attempts to hide weak arguments. But it turns out personal attacks were all OID attorneys could offer when the district's fallowing program was challenged under the authority of the California Environmental Quality Act (CEQA).

OID had claimed there were no significant impacts from its proposed "On-farm Conservation Program," which involved fallowing as many as 3,000 acres of farmland within the district. But in a decision released early last week, Judge Beauchesne found that the district's "Negative Declaration" was, "a minimalist work project which fails to meet the basic requirements of the law." He agreed with virtually all of OGA's objections to the program, writing that, "Each of the criticisms of the Negative Declaration have merit, in the Court's view."

The court's ruling was just the latest in a long series of setbacks for a water district that can't adjust to twenty-first century realities, especially those requiring transparency and public trust. Signs all over the district read, "Abundant Water, Lowest Cost, Best Management," but OID has consistently failed to measure up to its extravagant claims.

This year's attempt to bypass CEQA requirements wasn't the first time OID management failed to perform due diligence. Back in 2015, the district's fallowing program was halted when OID water attorney Tim O'Laughlin admitted, "We need a full-blown EIR." In that same year, the *Modesto Bee* revealed that OID had failed to meet state and federal re-districting standards going back as far as the 2000 census.

OID entered this most recent court case woefully unprepared to defend its assertion there would be no significant impacts from the fallowing program. In fact, when they attacked the motives of OGA members Louis Brichetto and Robert Frobose, Judge Beauchesne had to remind OID attorneys that, "...it is axiomatic that motive need not be proven either in a criminal case or a civil case."

In what amounted to a desperate attempt to revise history, OID's attorneys accused OGA of "misquoting the record." Judge Beauchesne firmly rejected the OID position, writing that, "The Court disagrees with Respondents that the difference in exact verbiage is 'almost sanctionable.' It is not even close."

Coming as it does within the context of an attempt to recall OID Director Linda Santos, the defeat reveals OID's pattern of personal attacks and false claims for what it really is—a clumsy attempt at misdirection intended to distract attention from the sleight of hand needed to conceal the true costs of OID's business plan.

OID's claims of "abundant water" don't account for pumping record amounts of groundwater, declining groundwater levels, a critically over drafted groundwater basin, and annexing megafarmers Trinitas Partners while turning away smaller local farmers. The "lowest cost" is true only when OID leaves out legal fees,

reimbursements to farmers damaged by OID's ongoing series of errors, and conversion of land to permanent crops.

The greatest irony of all for OID customers is that Linda Santos has said all along she just wants OID to be open to public view and do things "the right way;" Had OID management listened to her, the district would have saved hundreds of thousands of dollars in legal fees. Instead, OID resorted to schoolyard tactics of name-calling and blame-gaming. The judge wasn't fooled.

Brisbane Baylands was mentioned in a post.

Attachment 1- Handouts received from Prem Lall



**Greenbelt Alliance**

September 20, 2016 · 🌐

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Explore the connections between the Bay Area's spectacular greenbelt and the future of our cities and towns while enjoying a unique culinary experience. Get your tickets today.



## Savor the Greenbelt | Greenbelt Alliance

Join us Thursday, October 6, at 6pm for our annual Savor the Greenbelt event.

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[Brisbane Baylands](#) Our pleasure, thank you [Greenbelt Alliance](#) for your great work!

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