

September 24, 2024

Tooele Valley Public Infrastructure District  
Board of Trustees  
8371 S. State Street, Ste. 202  
Sandy, UT 84070

*Sent by Email to: Jacob Clark [jclark@SHutah.law](mailto:jclark@SHutah.law), Jay Springer [Jspringer@SHutah.law](mailto:Jspringer@SHutah.law)*

**Re: Contesting August 30<sup>th</sup>, 2024’s Notice of Hearing and Bonds to be Issued**

Dear Board of Trustees of the Tooele Valley Public Infrastructure District:

This letter serves as a formal contest to the Tooele Valley Public Infrastructure District’s Board of Trustee (“TVPID”) decision to adopt a resolution authorizing the issuance of the Limited Tax and Tax Differential Bonds, Series 2024A-1 (the “Bonds”).

The TVPID must enjoin the issuance of the Bonds until the Board of Trustees confirms its decisions will not adversely impact the Aggrieved Parties, Utah Physicians for a Healthy Environment, and the Center for Biological Diversity and their members and supporters in Tooele County. Utah Physicians for a Healthy Environment (“UPHE”), founded in 2007, is dedicated to protecting the natural environment on which the public health of Utahans largely depends. UPHE is the largest civic organization of health care professionals in Utah. Its members and supporters include approximately 430 physicians and over 3,500 members of the public who are also advocates for clean air, clean water, and healthy, functioning ecosystems. The Center for Biological Diversity (“Center”) is a non-profit membership corporation and is involved in species and habitat protection issues worldwide, including throughout the Great Basin. A primary focus of the Center’s work in Utah is protection of the Great Salt Lake and surrounding wetlands. The Center also works to reduce air pollution and greenhouse gas emissions to protect biological diversity, the environment, and public health. The Center has over 68,000 members, including more than 770 members living in Utah.

The Aggrieved Parties request a hearing to further discuss the errors and irregularities presented in this contest. The TVPID’s Bond Issuance violates the due process clause of the Utah Constitution; fails to provide the public with critical financial documents underlying TVPID’s decisions; fails to establish minimum mitigation and environmental standards as required by Utah Code Ann. §11-58-602(1)(b)(i-iii)”; fails to adequately disclose how the TVPID plans to secure the bond as required by Utah Code Ann. § 17D-4-301(2)(b); and violates private property rights. At this juncture, the TVPID must pause, provide the public with the information requested in this letter, and restart the

bond issuance process after the public has reviewed all the evidence substantiating this decision.

- I. As a threshold matter, this expedited notice and hearing with limited public involvement violates the due process clause of the Utah Constitution because the August 30, 2024 Notice of Bond Issuance and the procedure for contesting this Bond Issuance is vague and fails to adequately notify parties of how to contest this decision.**

The Notice of Bonds to be Issued is vague as to how the Aggrieved Parties should further engage in this process. The Notice solely states:

NOTICE IS FURTHER GIVEN that a period of thirty (30) days from and after the date of the publication of this notice is provided by law during which any person in interest shall have the right to contest the legality of the Resolution, the Indenture (as it pertains to the Series 2024A-2 Bonds), or the Series 2024A-2 Bonds, or any provision made for the security and payment of the Series 2024A-2 Bonds, and that after such time, no one shall have any cause of action to contest the regularity, formality, or legality thereof for any cause whatsoever.

“Notice of Bonds to be Issued,” August 30, 2024. In this Notice, it is unclear how an interested party would further engage in this process. The language in the notice makes clear that the contest period timeline is 30 days, although the notice fails to include specifics of what a contest is. For example, is a contest a letter essentially appealing the decision to another land use entity? Is a contest a civil action filed in state court? Who should receive the contest? The notice is so vague that a reasonable person would not know the next steps for how to engage in the process.

Because the Notice of Bonds to be Issued is so vague and the evidence in the record supporting the bond issuance has not been shared with the public, the Aggrieved Parties submit this contest letter and request a hearing within 60 days of the TVPID turning over the entire project record for review by the Aggrieved Parties. The TVPID should restart the clock on its Bond Issuance once it has shared the evidence in the record. To do otherwise would be a violation of the due process clause of the Utah Constitution.

## **II. Critical financial information not provided to the public prior to Bond Issuance.**

A key tenet of Utah land use law is that all decisions made by a land use authority must include substantial evidence in the record to support their decision. Utah Code Ann. 11-14-316(2)(b) requires that “[w]hen a resolution or other proceeding provides for the issuance of bonds, the governing body may, in lieu of publishing the entire resolution or other proceeding, publish a notice of bonds to be issued, titled as such, containing...the purpose of the issue[.]” Additionally, the UIPA requires that every Project Area Plan “shall contain (among other things) the board’s findings and determination that: (i) there is a need to effectuate a public purpose; (ii) there is a public benefit to the proposed development project; (iii) it is economically sound and feasible to carry out the project area plan.” As discussed below, the TVPID has failed to include crucial financial documents in the record that would allow the public to scrutinize this decision and comply with Utah Code Ann. 11-14-316.

- A. Failure to explain the purpose of the Bond Issue; specifically a Market Study documenting the nature of and amount of Public Benefits (versus benefits directly to the private developers) from the Bond Issuance as required by UIPA Statute.
- B. Failure to explain the purpose of the Bond issue; specifically the required discussion of quality job creation from the Bond Issuance. The Utah Legislature originally required that UIPA specifically limit the development incentives to those projects that demonstrably created jobs that pay at least 130% of the average of all wages within the county in which the project was located. The Legislature eliminated that language when it realized that generic UIPA warehouse projects could not meet this standard. The UIPA Board replaced the original, quantitative public benefit objective with “best efforts” language. The TV PID has failed to meet even the weakened provision for long term quality employment by not providing any documentation that the Bond Issuance will provide long term quality employment as originally specified and still required.
- C. Failure to explain the purpose of the Bond Issue; specifically a Market Study proving that the Tooele Valley project could not be financed privately without the diversion of any Taxpayer Resources. The Tooele

Valley PID fails to explain why the State of Utah should be granting them access to taxpayer resources versus competitive, private real estate developers whose business plans are superior to theirs. Tooele Valley PID is setting a precedent whereby any generic developer can gain access to tax-exempt funding advantages for their private activities without proper disclosure or public engagement concerning their business purpose.

- D. Failure to explain the purpose of the Bond Issue; specifically, a Traffic Study proving that the Bond Issuance will reduce traffic congestion in the critical I-80 Corridor. There is only one practical east/west route through the Tooele Valley and the TV PID is proposing to increase commercial activity with 2.5MM sq. feet of new warehouses directly along the traffic bottleneck without publishing a quantitative traffic study showing that they will mitigate any increased traffic congestion from their project.
- E. Failure to provide a summary of the significant financial forecast assumptions and accounting policies for the Tooele Valley warehouse project including scenarios of slower build-out given the tens of millions of additional square feet of warehouse space being facilitated simultaneously by UIPA in Tooele and the Northwest Quadrant. Over-supply will directly impact project revenues and property values and the financial details of this likely scenario have not been produced by the Tooele Valley PID.
- F. Failure to explain the impact on the financial forecast of the effect of natural events such as the March 2020 earthquake and climate change which could have a material adverse effect on the development of the TV PID and the public resources needed to respond to continued drought, wildfire mitigation, land subsidence and increasing severity of heat waves.
- G. Failure to explain hazardous waste management programs and costs on the Bond Issue. Tooele County has a number of major hazardous waste operations whose rail and truck imports travel directly past the proposed Tooele Valley warehouse district. A mishap involving hazardous waste on or directly adjacent to the TVPID property would consume significant Tooele County response resources and potentially adversely impact the taxable value of the property. No estimate of the potential risks or public remediation costs of these issues has been provided to the public.

### **III. The TVPID’s Issuance of the Bonds and Tax Differential Agreement Violates the Utah Inland Port Authority’s Requirement to Adopt a Business Plan and Associated Environmental Analysis and Mitigation Where There Is A Tax Differential Agreement Between The Two Entities.**

Based on the limited documentation provided to the public, TVPID and Utah Inland Port Authority (“UIPA”) have failed to establish minimum mitigation and environmental standards for the development, despite the acknowledgment of the ecological importance of the development’s location. As a part of the Bond Issuance, on September 5, 2024, the TVPID entered into an Interlocal Tax Sharing Agreement with UIPA. *See* “TV PUBLIC INFRASTRUCTURE DISTRICT & THE UTAH INLAND PORT AUTHORITY NOTICE OF INTERLOCAL TAX SHARING AGREEMENT,” located at <https://www.utah.gov/pmn/files/1168339.pdf>. As a part of this agreement, the UIPA would pay a tax differential to the TVPID. Where the UIPA gives a tax differential to the TVPID, that triggers the need for mitigation and environmental standards. *See* Utah Code Ann. § 11-58-602. In addition, UIPA’s Project Area Plan clarifies that development’s location is of utmost ecological importance:

While the Utah Inland Port Authority views this Tooele Valley project area as strategic, we recognize this sits in proximity to important wetlands. As such, the Port will be vigilant in working with developers to ensure that this area balances the best available technology to create a development that is harmonious with its natural environment. As Tooele County has deemed that this site is appropriate for development, and have zoned the site accordingly, the Port will bring its tools and capabilities to ensure that the development reaches its optimal potential for targeted growth and environmental balance. The Port recognizes that its project areas that have adjacency to the Great Salt Lake need particular attention so as not to destroy any part of the Great Salt Lake’s ecosystem. The Port will not support any development or rail infrastructure that destroys wetlands on this or adjacent to this site.

Based on statements from UIPA and the statutory requirement that TVPID have a required minimum mitigation and environmental standards, the Issuance of the Bonds and the Tax Differential Agreement violate Utah law. In view of the commitments to environmental mitigation made by UIPA with respect to this project, and the unmet statutory requirement that the TVPID have minimum mitigation and environmental

standards in place, the Issuance of the Bonds and the Tax Differential Agreement at this time conflicts with UIPA's own commitments and violates Utah law

**A. The TVPID is violating Utah Code Ann. § 11-58-602(b)(i)(A) and cannot receive a tax differential from UIPA until there are mitigation and environmental standards in place.**

Utah law requires that the UIPA “establish minimum mitigation and environmental standards that a landowner is required to meet to qualify for the use of property tax differential under Subsection (1)(a)(ix) in the landowner's development.” Utah Code Ann. § 11-58-602 (1)(b)(i). Here, the UIPA and TVPID entered into an agreement for a tax differential and the public has not been provided with the mitigation and environmental standards that the statute requires to use a property tax differential.

**B. The TVPID is violating Utah Code Ann. §11-58-203(1)(c) and (d) by failing to protect the hydrology of the area the TVPID plans to develop.**

Utah Code Ann. §11-58-203(1)(c) and (d) states that development respect and “maintain sensitivity to the unique natural environment of areas in proximity to the authority jurisdictional land and land in other authority project areas;” and “improve air quality and minimize resource use[.]” This language is evidence of a legislative intent to impose on UIPA the duty to protect the hydrology of the TVPID on which the unique and threatened ecology of the Great Salt Lake depends. This duty cannot be discharged effectively without imposing restrictions on groundwater consumption by the PID developers. Under the circumstances, UIPA has a duty to impose meaningful groundwater consumption restrictions as a means of “minimizing resource use” as a necessary means of “maintaining sensitivity to the unique natural environment” UIPA has imposed the 200,000-gallon restriction on water consumption by statute in the Northwest Quadrant project area and incorporated the same 200,000-gallon restriction in UIPA's 20 Wells Project Area. See UIPA's 20 Wells Project Area Plan and Budget, at 10. The water crisis is more severe in the Tooele Valley project area than either of the other two where the restriction has been imposed because of its clay soil, its shallow water table, and the drying of wells in the surrounding area.

Ben Hart, UIPA's Executive Director, said in response to specific criticism of its development-promoting activities in the Tooele valley that, "We are not going to participate in the destruction of the wetlands or harm the Great Salt Lake in any way, shape, or form."<sup>1</sup> This shows a UIPA's verbal commitment to minimize the stress that the

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<sup>1</sup> <https://www.ksl.com/article/50809828/tooele-county-inland-port-areas-approved-amid-concerns-from-residents-environmental-groups>.

TVPID project will put on the hydrology of the Great Salt Lake by unrestricted consumption of groundwater in the TV Project Area.

It is our understanding that the TVPID is actively recruiting data centers and cold storage facilities to the site.<sup>2</sup> Data centers use 25 times more potable water per day than is allowable under Utah Code Ann. § 11-58-602 (1) (b)(i)(B). Data centers can use up to five million gallons of potable water per day. At this point, TVPID and UIPA have not shared its water plan for the project area.

Water wise construction will become increasingly important with the projected growth of the Tooele Valley. The primary shareholders of water rights in the valley are Rio Tinto Kennecott and the Church of Jesus Christ of Latter-day Saints (LDS Church). Given the scope of development, it is recommended that the proposed project area have a strategic plan with regard to water use, which is currently under Development.

UIPA Project Area Draft Plan, p. 8. Before the TVPID and UIPA can enter into a tax differential agreement, both entities must share their evidence that the TVPID is not recruiting high-water use industries, like data centers; however, one of the TVPID Trustees was recently quoted saying: “We have had several [companies] who will provide i-cloud services through data storage centers which employ highly skilled technical people.”<sup>3</sup> Again, if the TVPID is actively recruiting data centers to use millions of gallons of potable water per day in the Tooele Valley, then the TVPID is prohibited from receiving tax differentials.

#### **IV. The TVPID’s Issuance of the Bonds violates Utah Code Ann. § 17D-4-301(2)(b) because the TVPID has failed to disclose how it plans to secure the bond.**

Utah law makes clear that the issuance of bonds “may not be secured by any improvement or facility paid for by the public infrastructure district.” Utah Code Ann. § 17D-4-301(2)(b). Furthermore, Utah Code Ann. § 11-14-316(g) requires that the Notice of Bond Issuance contain “a general description of the security pledged for repayment of the bonds[.]” Here, there is no evidence in the record that indicates how the bond will be

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<sup>2</sup> “A new front in the water wars: your internet use,” The Washington Post, April 25, 2023 <https://www.washingtonpost.com/climate-environment/2023/04/25/data-centers-drought-water-use/>

<sup>3</sup> <https://greatsaltlakenews.org/latest-news/amplify-utah/its-a-losing-battle-approved-tooele-inland-port-developments-frustrate-local-residents>

secured, let alone a general description of the security pledged for the repayment of the bonds. More generally, the TVPID has failed to demonstrate how it will secure the bond.

**V. The TVPID's issuance of the Bonds violates the Aggrieved Parties' property rights.**

Presently, the issuance of the Bonds will fund a project that is situated on private property not owned by the TVPID. The Eddington family and Anderson family own property on the southern boundary of the TVPID that is currently proposed for development. In addition to violating the Utah Constitution because eminent domain proceedings have not begun, this violates the UIPA's originating statute, which requires the TVPID own all the land in the public infrastructure district.

**VI. Conclusion**

The Board of Trustees of the TVPID has issued a bond without proper evidence in the record to support its compliance with a patchwork of Utah statutes meant to protect Utah taxpayers from funding projects that harm our precious water resources and fail to contribute financially to the public good. The TVPID has rushed this process with without due process; failed to demonstrate the development's financial viability and transparency; entered into a tax differential agreement without following state law; and violated private property rights. Put simply, the TVPID has made numerous errors and irregularities in the process leading up to issuing these bonds. Accordingly, the TVPID must pause, add the requisite evidence to the record, re-issue its Notice of Bond Issuance, and demonstrate to the public that this development complies with Utah law.

Sincerely,  
Brian Moench, MD  
Board Chair  
Utah Physicians for a Healthy Environment

Deeda Seed  
Senior Utah Campaigner  
Center for Biological Diversity

Cc: Utah Inland Port Authority Board  
Tooele County Council