



**DESERT TORTOISE COUNCIL**

3807 Sierra Highway #6-4514

Acton, CA 93510

[www.deserttortoise.org](http://www.deserttortoise.org)

[eac@deserttortoise.org](mailto:eac@deserttortoise.org)

**Via email and Certified Mail Return Receipt**

March 18, 2025

Amy Dutschke  
Pacific Regional Director  
Bureau of Indian Affairs  
2800 Cottage Way, Suite W-2820  
Sacramento, CA 95825  
[amy.dutschke@bia.gov](mailto:amy.dutschke@bia.gov)

RE: Development of Land Held in Trust for the Twentynine Palms Band of Mission Indians

Dear Ms. Dutschke,

The Desert Tortoise Council (Council) is a non-profit organization comprised of hundreds of professionals and laypersons who share a common concern for wild desert tortoises and a commitment to advancing the public's understanding of desert tortoise species. Established in 1975 to promote conservation of tortoises in the deserts of the southwestern United States and northern Mexico, the Council routinely provides information and other forms of assistance to individuals, organizations, and regulatory agencies on matters potentially affecting desert tortoises within their geographic ranges.

Both our physical and email addresses are provided above in our letterhead for your use when providing future correspondence to us. When given a choice, we prefer to receive emails for future correspondence, as mail delivered via the U.S. Postal Service may take several days to be delivered. Email is an "environmentally friendlier way" of receiving correspondence and documents rather than "snail mail."

The Mojave desert tortoise is among the top 50 species on the list of the world's most endangered tortoises and freshwater turtles. The International Union for Conservation of Nature's (IUCN) Species Survival Commission, Tortoise and Freshwater Turtle Specialist Group, now considers the Mojave desert tortoise to be Critically Endangered (Berry et al. 2021), "... based on population

reduction (decreasing density), habitat loss of over 80% over three generations (90 years), including past reductions and predicted future declines, as well as the effects of disease (upper respiratory tract disease/mycoplasmosis). *Gopherus agassizii* (sensu stricto) comprises tortoises in the most well-studied 30% of the larger range; this portion of the original range has seen the most human impacts and is where the largest past population losses have been documented. A recent rigorous rangewide population reassessment of *G. agassizii* (sensu stricto) has demonstrated continued adult population and density declines of about 90% over three generations (two in the past and one ongoing) in four of the five *G. agassizii* recovery units and inadequate recruitment with decreasing percentages of juveniles in all five recovery units.”

This status, in part, prompted the DTC to join Defenders of Wildlife and DTPC (Defenders of Wildlife et al. 2020) to petition the California Fish and Game Commission in March 2020 to elevate the listing of the Mojave desert tortoise from Threatened to Endangered in California. In its status review, California Department of Fish and Wildlife (CDFW) (2024a) stated: “At its public meeting on October 14, 2020, the Commission considered the petition, and based in part on the Department’s [CDFW] petition evaluation and recommendation, found sufficient information exists to indicate the petitioned action may be warranted and accepted the petition for consideration. The Commission’s decision initiated this status review to inform the Commission’s decision on whether the change in status is warranted.”

Importantly, in their April 2024 meeting (CDFW 2024b), the California Fish and Game Commission voted unanimously to accept the CDFW’s petition evaluation and recommendation to uplist the tortoise from threatened to endangered under the California Endangered Species Act based on the scientific data provided on the species’ status, declining trend, numerous threats, and lack of effective recovery implementation and land management. The Commission is expected to vote on uplisting the tortoise to endangered in the next few months.

Recently the Council became aware of a development project underway on land held in trust by the Bureau of Indian Affairs (BIA) for the Twentynine Palms Band of Mission Indians (Tribe). The project is located on the west side of Yucca Valley and south of State Highway 62 in San Bernardino County, California. It is referred to as the Cielo property and consists of six parcels – APN 0586-042-01, APN 0586-042-02, APN 0586-042-03, APN 0586-042-04, APN 0586-042-05, and 0586-042-06. We understand that a business was constructed on the property, a marijuana dispensary, and another project is planned – to construct, operate, and maintain a travel center that includes a gas station with numerous fuel pumps and a store. The marijuana dispensary included a request to the Town of Yucca Valley (Town) for authorization to install one or more structures and/or infrastructure (e.g., utilities) on the property.

The Council is concerned that the completed project (marijuana dispensary) and proposed project (travel center) have not undergone appropriate National Environmental Policy Act (NEPA) compliance and Federal Endangered Species Act (ESA) compliance. Our concerns are based on the following information:

On December 13, 2022, the BIA issued a Notice of Decision (Case Number 23517) for the six parcels (Cielo property) to be held in trust by the BIA for the Twenty-nine Palms Band of Mission Indians (Tribe). In that decision document BIA relied on the following information regarding the future management of that property:

1. Under “25 C.F.R. §151.10(c) Purpose for which the property will be used” BIA stated, “The Cielo property is currently undeveloped open space. The Tribe has no plans to change the use of the Property.”
2. Under “25 C.F.R. §151.10(f) – Jurisdictional problems and potential conflicts of land use” BIA stated, “The acceptance of the Cielo property into federal trust status for the benefit of the Tribe will remove the property from State and local laws concerning real property taxation and other land use regulations. Tribal law will govern these activities after the property is accepted into trust, to much the same extent that it does now on existing trust land.” “It is our determination that there are no jurisdictional or potential land use conflicts regarding land use.”
3. Under “25 C.F.R. §151.10(h) – Environmental Compliance: The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7 National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.”

For “National Environmental Policy Act Compliance . . . the proposed action herein has been determined not to require the preparation of either an environmental assessment (EA) of environmental impact statement (EIS). A categorical exclusion for the acquisition of the Cielo property was approved . . . Compliance with NEPA has been completed.”

4. For “Endangered Species Act (ESA) Compliance,” “The Endangered Species Act (ESA) requires federal agencies to determine if its action may affect a threatened or endangered species. The BIA review concludes no effects to endangered or threatened species would result from the Cielo acquisition.”
5. “25 CFR §151.11(c) – Where land is being acquired for business purposes, the Tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use: The subject property is not being obtained for business purposes but will continue to be utilized as open space. A business plan is not required.”

This information provided in BIA’s Notice of Decision appears to be deeply flawed because it was based on inaccurate information and incomplete analysis of connected actions.

Regarding 1., some of the land has been developed. Please see Figures 1 through 3 – photographs of recent activity on the Cielo property are attached to this letter. The Tribe initiated communication with the Town regarding the development of the Cielo property in January 2023 a little more than 30 days after the BIA’s Notice of Decision was issued and shortly after the 30-day

appeal period ended. These communications continued until late 2024. If the Cielo property were to remain as open space, there would be no need to engage in conversations with the Town regarding the Cielo property for more than a year. This activity and timeline with the Town gives the impression that the Tribe had plans to develop the property prior to BIA's issuance of the Notice of Decision. The Cielo property now has a marijuana dispensary located on it. The Council concludes that the information and conclusion that the BIA provided for this factor was incorrect. Part of the Cielo property has been developed. The Tribe had plans to change the use of the Property.

Regarding 2., the determination of no potential conflicts with land use appears to not be supported by the information provided in the Notice of Decision. We assume this determination was based on BIA's assumption from information provided by the Tribe that the land would not be developed.

The additional statement that Tribal law will govern these activities after the property is accepted into trust, to much the same extent that it does now on existing trust land" is unclear in its meaning. The marijuana dispensary is located near existing residences. The Tribe recently developed a large travel center on its property in Coachella (<https://www.mobilityplaza.org/news/38981>). According to "Gary Fletcher, executive director of travel centers for the tribe, the 12,000-square-foot facility marks the debut of a new era for the tribe's retail ventures. Apart from its Kupa Coffee Shop, the brand expects to expand the site with a truck wash, truck repair facility, and a trucker lounge by early 2025." "This Coachella location boasts 59 fueling positions, with 36 under the auto canopy and 15 under the truck canopy, designed to accommodate a wide range of vehicles. The tribe plans to open three more sites on Twenty-Nine Palms Band of Mission Indian Reservation land across California."

The Council is concerned that the Tribe is planning to develop a similar travel center on the Cielo property. If the property were under the jurisdiction of the Town of Yucca Valley, there would be a public hearing for the proposed development, the need for a conditional use permit, and the preparation of, as a minimum, a mitigated negative declaration under the California Environmental Policy Act (CEQA) because of the numerous new impacts this development would impose on the human environment in the vicinity of the development. A similar process would have occurred for the development of the marijuana dispensary. The Council concludes that the typical land use process to disclose a proposed development project on private property, notify nearby land owners, analyze the impacts of the proposed development project, provide for public input, and mitigate the impacts to minimize or avoid impacts to the human environment has been circumvented by transferring the lands to Tribal control where these land use processes are no longer required. The Council concludes that the information and conclusion that the BIA provided for this factor was unsupported and incorrect.

Regarding 3., BIA states that a categorical exclusion for the acquisition of the Cielo property was approved and compliance with NEPA has been completed. However, NEPA requires that connected actions be evaluated together. Before the development of the travel center or other development project could occur under tribal law (and bypassing state and local requirements for environmental compliance and development including development that include hazardous

materials), the subject land needed to be transferred to the reservation. Thus, it appears that BIA segmented its NEPA compliance by isolating the acquisition of the property as one NEPA action while not addressing the Tribe's plans to develop the property. This is a violation of NEPA. The Council concludes that the information and conclusion that the BIA provided for this factor was incorrect.

BIA should require the Tribe to halt all development activities on the Cielo property that BIA holds in trust, and BIA should complete NEPA compliance for the existing and proposed development. The appropriate NEPA compliance document for a marijuana dispensary or a travel center would be an environmental assessment that is circulated for public comment or an environmental impact statement if the Tribe has other related development projects (which the quote from Gary Fletcher above indicates).

Regarding 4., BIA concludes "no effects to endangered or threatened species would result from the Cielo acquisition." In Section 4.4 "Endangered Species and Historic Property Consultation," of the BIA's NEPA Guidebook (2012), BIA states that:

"Under Section 7 consultation under the ESA [Endangered Species Act] (50 CFR 402) is not required when the BIA determines that a project will have "no effect" to an endangered species or critical habitat because none are located in the project area. Any determination beyond a "no effect" will require informal and possibly formal consultation with the U.S. Fish and Wildlife Service (USFWS). The BIA offices should maintain close coordination with local USFWS offices to ensure proper consultation occurs."

With regard to the Notice of Decision, we found no information in the Notice that documented that the NEPA Guidebook's requirements had been followed, that is, that "the BIA determined that a project will have "no effect" to an endangered species or critical habitat because none are located in the project area."

The Council requests that BIA provide supporting documentation of the process and information that it used to determine that no Mojave desert tortoises were or are located in the project area in its Notice of Decision.

We are puzzled as to how the BIA determined that there are no threatened or endangered species located in the project area. The Cielo property is within the range of the federally threatened Mojave desert tortoise (USFWS 2011, page 46), contains suitable habitat for the tortoise (Nussear et al. 2009, page 13; USFWS 2011, page 52), and is connected/adjacent to larger areas of suitable habitat for the tortoise (USFWS 2011, page 52; Averill-Murray et al. 2021). A query of IPaC (Information for Planning and Consultation; <https://ipac.ecosphere.fws.gov/location/index>), a planning tool provided by the USFWS on-line, shows the Mojave desert tortoise as occurring in the project area. These documents and the IPaC website are available on-line to the public.

We are unaware that surveys were conducted by BIA to document that no tortoises were occupying the project area. For the tortoise, the USFWS has issued pre-project survey level protocols for the tortoise to be conducted by biologists deemed qualified by the USFWS throughout the “action area” of the development on the Cielo property. The “action area” is defined in 50 Code of Federal Regulations 402.2 and the USFWS Desert Tortoise Field Manual (USFWS 2009) as “all areas to be affected directly or indirectly by proposed development and not merely the immediate area involved in the action.” Thus, the action area that is surveyed for tortoises/tortoise sign is larger than the project footprint/project site. Absent these surveys and coordination with the USFWS, the BIA has provided no information to support its conclusion of “no effect” as described in the BIA NEPA Guidebook (BIA 2012).

Regarding the current development of the Cielo property, because several sources listed above indicate that the tortoise/tortoise habitat occur in the project area, the Council is concerned that the construction, operation, use, and maintenance of this project is likely to adversely affect the tortoise and may result in the take of the tortoise. Take includes harming or harassing a listed species that may occur from direct or indirect impacts from the project.

For example, because tortoises spend most of their time underground, it is extremely difficult to determine when conducting surface disturbance activities whether a hatchling to adult desert tortoise is in a burrow or tucked under a shrub from the vantage point of the operator of a grader, other heavy equipment, or a vehicle. This is an example of direct mortality. An example of an indirect impact that contributes to tortoise mortality includes providing subsidies of food, water, and sites for perching and nesting by common ravens (e.g., fences, walls, and other vertical structures; uncovered containers of trash, litter, etc.) and other tortoise predators. These and other impacts to the tortoise would be caused by the construction, operation, and use of the marijuana dispensary and the construction, operation, and use of the travel center.

As BIA is aware, compliance with the Federal Endangered Species Act (ESA) applies to any action that is authorized, funded or carried out by a federal agency, or any action by a state, tribal, or local agency or private entity that is likely to result in take of a federally listed species. Consequently, the Council is requesting that the BIA provide documentation to the Council of its consultation with the U.S. Fish and Wildlife Service (USFWS) regarding the construction, operation, use, and maintenance of the projects on the Cielo property and their direct and indirect effects/impacts to the tortoise. We presume that BIA would be the responsible entity for ensuring compliance with the Federal ESA because BIA is holding the Cielo property in trust for the Tribe.

Because BIA did not provide documentation to support the requirement that for a “no effect” determination the listed species is not present in the project area, several publicly available sources indicate that tortoises and tortoise habitat are in the project area, and the Cielo property has recently been developed, the Council concludes that the information and conclusion that the BIA provided for this factor in the Notice of Decision were unsupported and incorrect.

Regarding 5., apparently BIA was incorrect in its Notice of Decision that the “subject property is not being obtained for business purposes but will continue to be utilized as open space. A business

plan is not required.” Apparently, a marijuana dispensary is located on the Cielo property (see photos attached). Under the Controlled Substances Act (CSA), marijuana is a Schedule I controlled substance. This federal law currently prohibits the manufacture, distribution, dispensation, and possession of marijuana except in federal government-approved research studies. Selling marijuana is a felony with a federal felony with penalties of up to five years in jail and up to \$250,000 in fines.

Our understanding is that the Cielo property where the marijuana dispensary is located is held in trust by the BIA. The land held in trust by a federal agency that has a business on it that sells marijuana and its products, which is a felony under federal law, provides an interesting public perception.

BIA should halt the development and require the Tribe to prepare and submit a factual business plan including plans for other travel centers, a marijuana dispensary, and other businesses that may be related to this property/the use of this property.

Because the Notice of Decision was based on information that was incorrect and unsupported for several of the factors that must be addressed before making the Decision, the Council believes that BIA should ensure that compliance with environmental laws is carried out correctly for past actions implemented on the Cielo property.

Although these concerns focus on compliance with federal environmental statutes, regulations, and BIA policies, we are also concerned about the Tribe’s discretionary request to the Town of Yucca Valley for authorization to install one or more structures/infrastructure on the property (please see attached figures). The conversation between the Tribe and the Town started in January 2023 and continued until late 2024. The permitting and/or construction of the structure(s) and/or infrastructure may be considered discretionary under the California Environmental Quality Act (CEQA), which triggers compliance with other California environmental laws and codes by the Town of Yucca Valley. Consequently, we are sending a copy of this letter to the California Department of Fish and Wildlife, California Public Utilities Commission, and others who may have jurisdiction.

In previous letters to the BIA (e.g., September 21, 2020; April 17, 2022; October 23, 2022) to the BIA’s Western Regional Office, the Council stated that the “Desert Tortoise Council wants to be identified as an Affected Interest for this and all other projects funded, authorized, or carried out by the BIA that may affect species of desert tortoises and that any subsequent environmental documentation . . . is provided to us at the contact information listed above.” The Council reiterates this request and identifies that the BIA did not notify the Council when it issued its December 13, 2022, Notice of Decision (Case Number 23517) for the Cielo property that is now the location of a marijuana dispensary.

To clarify, we ask that you notify the Council at [eac@deserttortoise.org](mailto:eac@deserttortoise.org) of any proposed projects that the BIA may be proposing to authorize, fund, or carry out in the range of any species of desert tortoise in the southwestern United States (i.e., *Gopherus agassizii*, *G. morafkai*, *G. berlandieri*,



*G. flavomarginatus*) so we may comment on it to ensure that the BIA fully considers and implements actions to conserve these tortoises as part of its directive to conserve biodiversity on lands it holds in trust.

Please respond in an email that you have received this comment letter so we can be sure our concerns have been registered with the appropriate personnel and office for this project.

Respectfully,



Edward L. LaRue, Jr., M.S.  
Desert Tortoise Council, Ecosystems Advisory Committee, Chairperson

Attachments (3figur): Photos of the Cielo property with an existing business (marijuana dispensary), recent surface disturbance, and installation of infrastructure

Cc: Ann McPherson, Environmental Review, U.S. Environmental Protection Agency, [mcperson.ann@epa.gov](mailto:mcperson.ann@epa.gov)  
Brian Croft, Assistant Field Supervisor, Palm Springs Fish and Wildlife Office, U.S. Fish and Wildlife Office, [brian\\_croft@fws.gov](mailto:brian_croft@fws.gov)  
Peter Sanzenbacher, U.S. Fish and Wildlife Service, Palm Springs Fish and Wildlife Office, U.S. Fish and Wildlife Office, [peter\\_sanzenbacher@fws.gov](mailto:peter_sanzenbacher@fws.gov)  
Heidi Calvert, Regional Manager, Region 6 – Inland and Desert Region, California Department of Fish and Wildlife, [Heidi.Calvert@wildlife.ca.gov](mailto:Heidi.Calvert@wildlife.ca.gov)  
Colorado River Basin Regional Water Quality Control Board, [info7@waterboards.ca.gov](mailto:info7@waterboards.ca.gov)

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Figure 1. Red Falcon marijuana dispensary on Cielo property held in trust by the Bureau of Indian Affairs for the Twentynine Palms Band of Mission Indians.





Figure 2. Recent installation of infrastructure and Joshua tree uprooted on the Cielo property held in trust by the Bureau of Indian Affairs for the Twentynine Palms Band of Mission Indians.





Figure 3. Recent installation of infrastructure and surface disturbance of the Cielo property held in trust by the Bureau of Indian Affairs for the Twentynine Palms Band of Mission Indians.

