



STATE OF OKLAHOMA
OKLAHOMA HORSE RACING COMMISSION

May 29, 2008

Sent via First Class Mail and Faxed to (918) 781-4604

Jeanetta Hanna, Regional Director
United States Department of Interior
Bureau of Indian Affairs
Eastern Oklahoma Regional Office
P.O. Box 8002
Muskogee, OK 74402-8002

Re: Official Comment of the State of Oklahoma Horse Racing Commission in opposition to the Application of the Shawnee Tribe to place a tract of land in Oklahoma City in trust for its benefit, to proclaim the property a new Indian Reservation of the Tribe, and to determine that the land is Indian land upon which gaming may be conducted.

Dear Regional Director Hanna:

Enclosed please find the Official Comment of the State of Oklahoma Horse Racing Commission in opposition to the Application of the Shawnee Tribe to place a tract of land in Oklahoma City in trust for its benefit, to proclaim the property a new Indian Reservation of the Tribe, and to determine that the land is Indian land upon which gaming may be conducted.

Because of the devastating effect that placing the requested Oklahoma City land in trust for the benefit of the Shawnee Tribe for gaming purposes will have upon the entire horse racing and breeding industry in Oklahoma, the Oklahoma Horse Racing Commission, for the first time in its twenty-five year history, is compelled to oppose an Application of a federally recognized Indian tribe to put Oklahoma land in trust. As explained in the Comment, the Shawnee Tribe's proposal to take Oklahoma City land, less than two miles from Remington Park Race Track, into trust for the purposes of operating a large casino and hotel complex — because of the unique circumstances that exist in Oklahoma — will have a disastrous effect not only on Remington Park, but on the entire horse racing and breeding

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industry, and will virtually destroy that entire industry — one of the largest in the State.

We respectfully request that you carefully consider the enclosed Comments, and, at the conclusion of your process, deny the Shawnee Tribe's Application.

Respectfully submitted,

Oklahoma Horse Racing Commission

by: 
Constantin Rieger, Executive Director
Oklahoma Horse Racing Commission

CAR/ab

Enclosure

**Oklahoma Horse Racing Commission's Comments in Opposition
to
the Application of the Shawnee Tribe to Place a Tract of Land in
Oklahoma City in Trust For its Benefit, to Proclaim the Property
a New Indian Reservation of the Tribe, and to Determine That
the Land is Indian Land Upon Which Gaming May be Conducted.**

Introduction

Because of the devastating effect that placing the requested Oklahoma City land in trust for the benefit of the Shawnee Tribe for gaming purposes will have upon the entire horse racing and breeding industry in Oklahoma, the Oklahoma Horse Racing Commission, for the first time in its twenty-five year history, is compelled to oppose an Application of a federally recognized Indian tribe to put Oklahoma land in trust.

Under the Oklahoma Horse Racing Act¹, the Oklahoma Horse Racing Commission is empowered to enforce the Act whose purposes include:

1. **encourage agriculture** and the **breeding of horses in this state**; and
2. **maintain race meetings held in this state of the highest quality** and free of any horse racing practices which are corrupt, incompetent, dishonest, or unprincipled . . .

Okla. stat. tit. 3A, 2001, § 203.7 (emphasis added).

The Shawnee Tribe proposes to take **Oklahoma City land, less than two miles from Remington Park Race Track**, into trust for the purpose of operating a large casino and hotel complex. Because of unique circumstances that exist in

¹Okla. stat. tit. 3A §§ 200 through 209.

Oklahoma, the Shawnee Tribe's operation of a casino **so close to Remington Park Race Track** will have a **disastrous effect not only on Remington Park but on the entire Oklahoma horse racing and breeding industry, and will virtually destroy that entire industry** — one of the largest in the State.

It is the devastation to the entire horse racing and breeding industry that the Shawnee casino would cause that compels the Commission to oppose the Shawnee Tribe's Application.

I.

Unique Circumstances Exist in Oklahoma — Circumstances Created Primarily to Benefit Existing Tribal Gaming Operations. Because of These Circumstances, the Entire Oklahoma Horse Racing and Breeding Industry is Dependent Upon the Purse Monies Derived From Remington Park Race Track's Gaming Machine Revenue.

A.

The Recent Emergence of Class III Gaming Machines in Oklahoma, After Nearly a Century of Their Illegality.

From statehood until very recently, the possession and operation of gaming devices and slot machines were prohibited by Oklahoma's criminal laws.² Thus, for many years, various attempts by Indian tribes to convince or compel the State

²See generally, Okla. stat. tit. 21 §§ 964 through 985, and Part IV of Oklahoma Attorney General's Opinion No. 93-1, discussing Oklahoma's then pervasive anti-gambling prohibitory laws.

of Oklahoma to enter into compacts permitting the use of Class III gaming machines were unsuccessful.³

Recently, however, desires of Indian tribes to operate Class III gaming machines in their gaming facilities and declining revenues in the horse racing industry resulted in a coalition of tribal and horse racing industry interests in legalizing Class III gaming machines in the State. The ultimate result of these shared interests was the proposal of State Question No. 712, which the people approved at an election in November, 2004.

State Question No. 712 created a unique situation in Oklahoma, a situation in which tribal gaming interests were given exclusive rights to non-house-banked card games, and a semi-exclusive right to operate unlimited numbers of Class III gaming machines, with the horse racing industry being provided an essential source of additional revenue through the use of limited numbers of Class III gaming machines at three locations only.

In approving State Question No. 712, the people of Oklahoma adopted the State-Tribal Gaming Act (the Act).⁴ The Act offered a Model Tribal Gaming Compact under which federally recognized Indian tribes with jurisdiction over Indian lands in Oklahoma could operate Class III gaming machines described in

³See, e.g. Ponca Tribe of Oklahoma v. State of Oklahoma, 834 F.Supp. 1341 (W.D. Okla. 1992) affirmed in part, reversed in part, 37 F.3d 1422 (10th Cir. 1994), cert. dismissed, 516 U.S. 972 (1995), vacated 517 U.S. 1129 (1996), on remand 89 F.3d 690 (10th Cir. 1996).

⁴Okla. stat. tit. 3A §§ 261 through 281.

the Act. Tribes could accept the State's offered compact by way of a signature of the Chief Executive Officer of the tribal government authorized to enter into compacts and providing it to the Governor along with tribal laws and ordinances.⁵

Further, if at least four (4) federally recognized Indian tribes entered into the Model Tribal-State Compact, and such compacts were approved by the Secretary of the Interior and notice of such approval was published in the Federal Register, then the Oklahoma Horse Racing Commission was required to license three (3) Oklahoma horse racing tracks to operate a limited number of defined Class III gaming machines.⁶

B.

Limitations Placed on Non-Tribal, Non-Indian Land Operation of Class III Gaming Machines.

1. Limited Number of Locations

To afford tribal gaming operations with a semi-exclusive right to use gaming machines in the State of Oklahoma, the Act, which contained the Model Tribal-State Compact, only permitted the use of authorized Class III gaming machines at non-tribal, non-Indian land facilities, on a limited basis, at three locations only.

Those three non-tribal, non-Indian land facilities are:

1. "A licensed race track located in the county with a population exceeding six hundred thousand

⁵Okla. stat. tit. 3A §§ 280 and 281.

⁶Okla. stat. tit. 3A § 262.

(600,000) persons” — **Remington Park Race Track, located in Oklahoma City,**⁷

2. “Two (2) licensed race tracks located in counties with populations not exceeding four hundred thousand (400,000) persons”:

- a. **Blue Ribbon Downs Race Track located** in far Eastern Oklahoma **in Sallisaw, Oklahoma,**⁸ and

- b. **Will Rogers Downs Race Track located in Claremore,** Oklahoma approximately thirty (30) miles Northeast of Tulsa, Oklahoma.⁹

2. Limited Number of Gaming Machines

The second limitation the Act placed upon non-tribal, non-Indian land gaming facilities was a severe limit on the number of gaming machines which each of the facilities could operate:

- **Remington Park in Oklahoma City** could initially operate **no more than 650** player terminals, which after three (3) years of operation could increase by an additional fifty (50), and in its fifth year of operation, could increase to its **maximum of 750** player terminals.¹⁰
- **Blue Ribbon Downs in Sallisaw, Oklahoma** is limited to **250** player terminals.¹¹

⁷Id.

⁸Id.

⁹Id.

¹⁰Id.

¹¹Id.

- **Will Rogers Downs in Claremore, Oklahoma** is limited to **250** player terminals.¹²

3. Limited Hours of Operation and Limited Placement of Machines

The Act also put operation restrictions on the three non-tribal, non-Indian land gaming facilities, as follows:

- Use of gaming machines is limited to **no more than 106 total hours per week**.¹³
- Gaming machines are limited to being used **no more than 18 hours in any twenty-four hour period**.¹⁴
- Gaming machines could only be used at a licensed **race track's enclosure where live racing is conducted**.

4. Requirement That In Order to Use the Limited Number of Gaming Machines, the Three Non-Indian, Non-Indian Land Race Tracks Must Bear the Economic Burden of Running a Specified Number of Races, With Remington Park Having to Run 1100 Live Races Annually.

In order to be able to operate the limited number of gaming machines authorized, the three non-Indian, non-Indian land gaming facilities/race tracks are required annually to run a specified number of horse races as follows:

- **Remington Park** is required to run no fewer than:
600 races for **Thoroughbred** horses, and
500 races for **Quarter Horses, Paints and Appaloosas**.

¹²Id.

¹³Id.

¹⁴Id.

- **Blue Ribbon Downs** is required to run no fewer than:
270 races for **Thoroughbred** horses,
270 races for **Quarter Horses**,
60 races for **Paints and Appaloosas**.
- **Will Rogers Downs** is required to run no fewer than:
270 races for **Thoroughbred** horses,
270 races for **Quarter Horses**,
60 races for **Paints and Appaloosas**.

Thus, in addition to having limits on their location, the placement of their machines, their hours of operation, and the number of machines available, the three non-Indian land gaming machine facilities, in order to operate any gaming machine at all, must bear the economic burden associated with conducting hundreds upon hundreds of horse races each year.

In sum, under the State Tribal Gaming Act, the non-tribal, non-Indian land operation of authorized gaming machines is severely restricted:

- Machine operation is limited to 3 licensed race tracks.
- Remington Park can never operate more than 750 machines and is currently limited to 700 machines.
- Blue Ribbon Downs is limited to 250 machines.
- Will Rogers Downs is limited to 250 machines.
- Machines cannot be operated for more than 106 hours per week.
- Machines cannot be operated for more than 18 hours in any twenty-four hour period.
- Machines can only be placed and operated within a race track enclosure where live horse racing is conducted.

- In order to operate any gaming machines at all, each of the three race tracks is required to conduct hundreds of live races, with Remington Park being required to conduct 1100 live races annually.

C.

No Limitations on Tribal Use of Authorized Class III Gaming Machines.

Unlike non-tribal, non-Indian land use of gaming machines, the use of gaming machines by federally recognized Indian tribes accepting the Model Tribal-State Compact have no such limits placed upon their operation and furthermore, enjoy other advantages:

- Tribes have no limit on the number of locations at which they can operate machines.
- Tribes have no limit on the number of machines they may operate.
- Tribes have no limit on the number of hours per week they may operate a machine.
- Tribes have no limit on the number of hours they may operate machines in a twenty-four hour period.
- Tribes have no limit on the type of facility in which they can place their machines.
- Tribes are given an **exclusive ability to offer non-house-banked card games**, a right which is not available to non-tribal, non-Indian land facilities.
- Tribes are **not required to conduct any horse races in order to operate gaming machines**.

These unique circumstances present in Oklahoma have resulted in the entire horse racing and breeding industry's dependence on the gaming machine revenue at Remington Park for its survival.

II.

Remington Park Race Track's Continued Success is Crucial to the Success of the Entire Horse Racing and Breeding Industry in Oklahoma Because:

- 1. It is Only One of Three Non-Tribal Gaming Machine Venues Permitted Under the State-Tribal Gaming Act and the Model Gaming Compact;**
- 2. Under the Limits Placed Upon the Number of Gaming Machines at Non-Tribal Gaming Facilities, Remington Park Operates the Lion's Share of Permitted Non-Tribal Gaming Machines;**
- 3. The Survival of Oklahoma's Horse Racing and Breeding Industry is Dependent on the Purse Monies Won at Races Conducted by Licensed Race Tracks;**
- 4. Purse Monies Generated by Those Placing Bets on Races — Both in Oklahoma and Across the Country — is Insufficient to Sustain a Viable Racing and Breeding Industry;**
- 5. Rather, it is the Additional Purse Monies Generated From Gaming Machine Revenues at Race Tracks that the Horse Racing and Breeding Industry Relies on for Its Survival;**

6. **Remington Park Provides the Lion's Share of the State's Horse Races and Generates the Lion's Share of the State's Gaming Machine Revenue;**
7. **At Remington Park, Over 70% of the Purse Monies Paid Come From Revenue Generated by its Gaming Machines;**
8. **The Loss or Severe Reduction of the Gaming Machine Purse Revenues at Remington Park, Which Would Result From Operation of the Proposed Shawnee Casino in Such Close Proximity to Remington Park, Would Virtually Cripple or Destroy the Entire Horse Racing and Breeding Industry in Oklahoma.**

A.

Symbiotic, Interdependent Relationship Between Race Tracks and Those Who Race and Breed Race Horses.

There is a symbiotic, interdependent relationship that exists between race tracks and the industry that races and breeds racing horses. The race tracks need a product to sell -- races to attract attendance and the placement of wagers. The better the quality of horses running in a race and the more horses in a race, the greater attraction the races have to the betting public.

On the other hand, those who race and breed race horses need race tracks where they can have an opportunity to run and win purse monies. The larger the

purses, the more attractive the races are to better quality horse owners, which in turn attracts more betting interests.

Those who race horses need the opportunity to win purses. Those who breed horses need races to create a market for the racing stock they breed and to be able to earn mare and stallion awards — awards paid to the owners of the sire and mare of a race horse in the Oklahoma-Bred Program that place one through five in either a race restricted to Oklahoma-Bred Program horses, or an open race with added purse supplements paid to Oklahoma-Bred horses.

In this symbiotic relationship between race tracks and those who race and breed race horses, it is the purse monies paid at the race track that form the foundation of the entire industry. Without sufficient purse monies, the industry falters and fails.

B.

Because of the Special Circumstances That Exist in Oklahoma, the Success or Failure of the Entire Horse Racing and Breeding Industry is Dependent on the Purse Monies Generated From Gaming Machines at Remington Park Race Track.

Remington Park is located in Oklahoma City just west of I-35 near the intersection of I-35 and I-44. It is by far the largest race track and largest non-tribal gaming facility in the State. Because of its location in the Unassigned Lands, there are no tribal gaming facilities within a twenty mile radius of Remington Park. Thus, if we were to draw a circle with a diameter of forty miles,

with Remington Park at its center, there is no competing tribal gaming facility within that circle.

Remington Park is not only the largest of the three race track/gaming facilities permitted to operate gaming machines, it is the most active. Remington Park has almost three times as many gaming machines as either of the other two race track/gaming facilities. It is required to run almost twice as many races than either of the other race track/gaming facilities, and it pays out four times more purse money than its closest competing race track/gaming facility. In short, Remington Park supplies the lion's share of racing opportunities and purse monies necessary to the support and survival of Oklahoma's horse racing and breeding industry.

C.

More Than Seventy Percent (70%) of the Purses Earned by Participating Horses at Remington Park Come From its Gaming Machine Revenues.

Purses are the monies paid to the owners of horses who finish in the top four or five positions or other designated positions in a horse race. There are several sources of purse revenue, including: wagers placed on the live races being conducted at a race track,¹⁵ simulcast revenue earned by wagers placed on the televised signal of live races either being sent out of or into a race track,¹⁶ purse

¹⁵Okla. stat. tit. 3A § 205.6.

¹⁶Okla. stat. tit. 3A §§ 205.7 and 205.7a.

supplements from the Oklahoma Bred Special Account,¹⁷ Tulsa area purse fund, funds designated by the official horsemen's representative organizations,¹⁸ and — critically important nowadays — revenue from the operation of gaming machines at race tracks.¹⁹

The operation of gaming machines at Remington Park has not only greatly increased the total dollars earned for payment of purses,²⁰ **its gaming machine revenue also constitutes over 70% of the total purses earned.** Because State Question No. 712 was not approved by the people until late 2004 and because of the startup time needed to begin the operation and regulation of gambling machines, Remington Park did not begin operating gaming machines until late 2005. A comparison of the total purses earned at Remington Park over the last several years clearly demonstrates that its gaming machine revenue has made it possible for Remington Park to increase greatly the purses it pays, as shown by the following chart:

¹⁷Okla. stat. tit. 3A § 208.3.

¹⁸Okla. stat. tit. 3A § 263.

¹⁹Okla. stat. tit. 3A 263.

²⁰In discussing purses, we use the total dollars available for purses from money earned at the race track that are statutorily allotted to purse monies for participating horses. Total purses earned do not include additional money added to purses from payments made by owners to participate in select stakes races.

Chart I

Total Purses Earned at Remington Park ²¹

	2003	2004	2005	2006	2007
Total Racing Purse Money Earned	\$ 6,049,318	\$ 5,661,852	\$ 5,479,728	\$ 5,574,325	\$ 5,328,381
Total Gaming Machine Revenue Earned for Purses	\$.00	\$.00	\$ 1,589,733	\$14,011,092	\$12,816,814
Total Purse Money Earned	\$ 7,049,318	\$ 5,661,852	\$ 7,069,416	\$19,585,417	\$18,145,195
Percentage of Gaming Machine Revenue in Total Purses	0%	0%	22.49%	71.54%	70.63%

Thus, while we see that the purse monies available to support the Oklahoma horse racing and breeding industry has greatly increased, we also see that the industry is totally dependent on gaming machine revenue for its survival, as over 70% of the purse monies it receives now come from gaming machine revenue.

²¹Information in all charts is from Audit Reports of the State Auditor and Inspector and have been rounded down to the nearest dollar.

D.

While the Two Smaller Race Track/Gaming Facilities Generate Purse Monies, Their Contributions Pale in Comparison to the Purse Monies Paid by Remington Park. Accordingly, the Survival of Remington Park is Absolutely Indispensable to the Survival of the Horse Racing and Breeding Industry in Oklahoma.

While the smaller race track/gaming facilities have derived some revenue from the gaming machine operations, the total purses they pay pale in comparison to those paid by Remington Park. With respect to Blue Ribbon Downs race track located in Sallisaw, Oklahoma, on the far eastern side of the State, the following chart of its total purses earned makes this point quite handily:

Chart II

Total Purses Earned at Blue Ribbon Downs ²²

	2004	2005	2006	2007
Total Purses Earned	\$ 860,550	\$ 938,434	\$1,684,886	\$1,484,258

Another measure of the comparatively small contribution Blue Ribbon Downs makes to industry purses is the small amount of money generated by operation of its gaming machines. As shown in Chart III, Blue Ribbon Downs'

²²These earned purses were increased through the infusion of supplemental purse monies from the Tulsa area purse fund, funds derived from money paid by tribes operating casinos in the Tulsa area in consideration for the State not permitting a non-Indian casino/race track in Tulsa.

gambling machines have only once annually generated more than a million dollars.

Chart III

Total Gaming Machine Money Earned for Purses at Blue Ribbon Downs

	2004	2005	2006	2007
Total Gaming Machine Revenue earned for Purses	\$.00	\$191,647.06	\$1,086,617.78	\$937,435.20

Further, while the total purses paid out at Will Rogers Downs, located in Claremore, Oklahoma, are higher than those at Blue Ribbon Downs, they also pale compared to the purse contribution payments made by Remington Park, as demonstrated by the following chart:

Chart IV

Total Purses Earned at Will Rogers Downs ²³

	2005	2006	2007
Total Purses Earned	\$123,398	\$3,351,77	\$4,872.157

In sum, the limited purse monies earned at the two small race track/gaming facilities cannot sustain the industry.

²³Will Rogers Downs race track was not licensed to operate 2004, thus no figures for that year can be included on the chart. Like Blue Ribbon Downs, Will Rogers Downs has also had some Tulsa area funds added to its purses.

E.

Because of the Many Limitations and Disadvantages Remington Park is Required to Operate Under, the Operation of a Large Casino/Hotel Complex by the Shawnee Tribe — Which Would Operate Without Such Restrictions and Requirements — Less Than Two Miles From Remington Park, Would Have a Disastrous Effect on Remington Park's Business.

Operating in the unassigned lands, Remington Park, as noted above, is protected from tribal gaming competition within a twenty mile radius. The Shawnee Tribe's application seeks to open a casino/hotel complex well within the twenty mile radius — indeed, less than two miles from Remington Park — and, on the same major highway, I-35.

The competition from the Tribe's operation would inevitably reduce Remington Park's gaming machine revenues, particularly because Remington Park and the Shawnee Tribe would not be operating on a level playing field. Remington Park would be operating under distinct disadvantages. Unlike Remington Park, the Shawnee Tribe could operate an unlimited number of gaming machines. Unlike Remington Park, the Shawnee Tribe could operate twenty-four hours a day. Unlike Remington Park, the Shawnee Tribe would not be limited in the type of facilities in which it may place its gaming machines; thus, the Tribe could place its machines in its hotel, gas station, shops and restaurants, as well as its casino. Unlike Remington Park, the Shawnee Tribe has no limit on the total number of

hours it could operate in a week — the Tribe could operate its casino and its machines located elsewhere on a 24/7 basis.

Further, the Shawnee Tribe could also offer card games, such as Blackjack, whereas Remington Park is prohibited from doing so. Finally, the Shawnee Tribe would not be operating under the financial burden of having to maintain and operate a race track and conduct 1100 live horse races each year.

Given the distinct **disadvantages** which Remington Park operates under, and the distinct **advantages** the Shawnee Tribe would be operating under, the head to head competition which the Shawnee Tribe seeks to bring to Remington Park's front door would have a devastating effect on Remington Park's business and gaming machine revenue. Indeed, since the Chickasaw Nation opened Riverwind Casino, a mega casino located in south Norman, just outside of the twenty mile circle surrounding Remington Park, Remington Park has experienced a decline in its gaming machine revenue. See 2007 earnings on Chart I.

Because Remington Park provides the lion's share of racing opportunities and purse revenues to the Oklahoma racing and breeding industry, losses caused by the head to head competition from the proposed Shawnee mega casino, less than two miles down the road at Remington Park, would have a disastrous effect upon the entire Oklahoma horse racing and breeding industry.

F.

The Disastrous Effect on the State Horse Racing and Breeding Industry Caused by the Loss of Gaming Machine Revenue at Remington Park Affects an Industry, a Community Made up of Many Components.

The horse racing industry is not simply made up of owners, trainers and breeders. It consists of grooms, hot walkers, jockeys, tattoo technicians, stewards, racing officials, track managers, track security, vendors who sell and supply food and drinks, souvenirs and the like at the race track. It includes those who sell feed, tack, trailers, horse walkers, utilities, office supplies, as well as tote companies, veterinarians, blacksmiths and regulators.

The industry also includes green space — breeding farms, training farms and all of their employees. Horse auction houses and horse sales companies are likewise part of the industry. In Oklahoma, it is one of the largest sectors of the State economy.

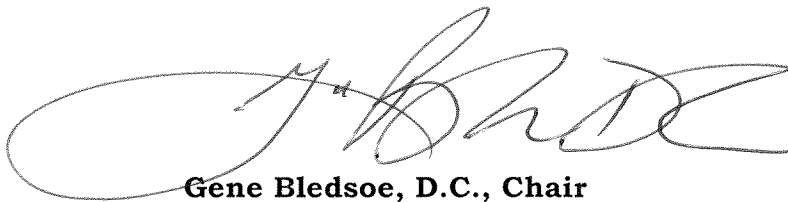
The fuel that runs this industry — its engine — is the purse money earned at race tracks. As we have seen, the industry is now dependent for its survival on the gaming machine revenues generated at Remington Park, as such revenues now constitute more than 70% of the purses earned at Remington Park. The loss or drastic reduction in that revenue source not only injures Remington Park, it also injures the entire industry. The Shawnee Tribe's application poses a real and substantial threat both to Remington Park's survival and to the entire industry's survival. This would have a disastrous effect on the entire State economy.

CONCLUSION

The gaming machine revenues at Remington Park now form the foundation upon which the entire State horse racing and breeding industry is built. Because of the disadvantages Remington Park operates under — **disadvantages designed to help the existing Indian gaming industry** — the direct competition, which the Shawnee Tribe seeks to bring to Remington Park's doorstep, will crumble — if not destroy — that foundation and the entire industry it supports. The Oklahoma Horse Racing Commission thus respectfully asks that the Secretary and the Department of the Interior **deny** the Shawnee Tribe's application to put the Oklahoma City land, located within less than two miles of Remington Park, in trust for gaming purposes. Because of the destructive effect the current application would have on an entire equine industry in Oklahoma, the Tribe should be required to look elsewhere — outside of the twenty mile protective radius Remington Park now has.

Respectfully submitted,

Oklahoma Horse Racing Commission



Gene Bledsoe, D.C., Chair