July 30, 2001

President Bruce Gonzales
Delaware Tribe of Oklahoma
PO Box 825
Anadarko, OK 73005

Dear Mr. Gonzales:

The Region V Chief requested that we determine whether the proposed Biscuit Hill site qualifies as Indian lands for gaming purposes under the Indian Gaming Regulatory Act. While there may be circumstances of which we are unaware, our preliminary view is that the lands do not presently constitute Indian lands for purposes of conducting gaming.

The Delaware Tribe is a federally recognized Indian tribe located within the State of Oklahoma. It proposes to game on lands described as follows:

> A tract of land beginning 1281.07 feet South and 44.8 feet West of the Northeast corner of the Southwest quarter (NE/[approximately 3 letters illegible on warranty deed]/4) of Section TEN (10). Township TWELVE (12) North, Range ELEVEN (11) West of the Indian Meridian, Caddo County, Thence West 300 feet; Thence South 300 feet; Thence East 300 feet; Thence North 300 feet to the point of beginning.

This tract of land was the subject of a June 11, 1999, Quit Claim Deed by Biscuit Hill, Inc. in favor of the Tribe. On the same date, Biscuit Hill conveyed the tract to the Tribe by Warranty Deed. There is no restriction against alienation described on either deed.

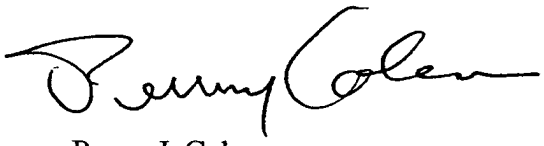
In a June 6, 2001, memorandum from Cory Aronovitz to Rainmaker Development LLC, Mr. Aronovitz indicated the Biscuit Hill property fell within the Indian Gaming Regulatory Act provision that "such lands are located in Oklahoma and – (i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or (ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma . . . ."

In a June 8, 2001, memorandum from Cory Aronovitz to Rainmaker Development LLC, Mr. Aronovitz stated that the Biscuit Hill property "has been removed from the State tax-roll, placing the property in a restricted status. Restricted land status in Oklahoma may conduct gaming pursuant to IGRA, Section 2719 (see previous memorandum) (sic). Therefore, the Biscuit Hill property may commence Class II gaming." There is no documentation or analysis in either of Mr. Aronovitz's memoranda supporting these conclusions.

In a June 26, 2001, letter from Vernon Crumm, Caddo County Assessor, to the Tribe, Mr. Crumm stated that this "property was made non-taxable when transferred to the tribe. Hinton 10-11-N-11W Biscuit Hill." In a July 30, 2001, telephone conversation with Penny J. Coleman, Deputy General Counsel, Mr. Crumm informed Ms Coleman that the County does not differentiate between fee and trust lands and that the County simply takes land off the tax roll as soon as it is transferred to a tribe, regardless of the land status.

Mr. Kirke Kickingbird, tribal attorney, indicates that the land has not been acquired in trust or otherwise by the United States on behalf of the Tribe. Therefore these lands are not trust lands and do not appear to be restricted against alienation by the United States as required by 25 U.S.C. § 2703(4)(B) (definition of Indian lands). Consequently, we do not believe that these lands constitute Indian lands under the Indian Gaming Regulatory Act.

Sincerely,



Penny J. Coleman
Deputy General Counsel

cc: Chief, Region V
Director, DOE
K Kickingbird