the commenters suggested that the proposed rule would discriminate against geographically isolated tribes, and should not apply to acquisitions for gaming purposes [due to preemption by the Indian Gaming Regulatory Act (IGRA)].

The exception on out-of-state acquisitions, was largely attacked as being too vague and inflexible. However, one commenter indicated that the exception should be modified to flatly prohibit *any* out-of-state acquisition for gaming purposes. Another commenter objected to the provision which would implicitly require that excepted tribes provide greater justifications for out-of-state acquisitions. Another comment suggested that the rule be expanded to require that such justifications include evaluations of alternative sites.

*Response:* The provisions which prohibit off-reservation acquisitions of ''out-of-state'' lands have been deleted. The portion of the proposed rule which referred to administrative costs has been deleted and other minor editorial changes (including the elimination of the term ''current or former reservation'') have been made in 25 CFR 151.11(b) of this Part.

The rule has not been relaxed for acquisitions of lands within tribal consolidation areas or tribal services areas, unless such acquisitions are legally mandated. The blanket exception for landless tribes has been narrowed to require that any lands to be acquried on behalf of such tribe be located in a state in which the tribe's aboriginal homelands are located. (Guidance in identifying ''aboriginal homelands'' may be obtained from federal court decisions and Indian Claims Commission proceedings.) It should be noted that the absence of more proximate economic opportunities would provide part of the ''greater justification'' required by 25 CFR 151.11(b) of this Part.

*Comment:* Comments about greater justifications as distance increases suggested that such distance should be irrelevant. Commenters questioned whether the use of the phrase ''current or former reservation'' was meant to distinguish the general definition of ''Indian reservation'' set forth in 25 CFR 151.2. They also questioned whether administrative costs should be considered, under either the existing 25 CFR 151.10 or the provision in the proposed rule which would suggest that such costs be addressed in tribal justifications.

*Response:* It should be noted that the BIA has informally required such justifications for acquisitions of distant lands since 1980. Section 20(c) of IGRA expressly restricts the Secretary's authority to acquire land for gaming purposes.

The rule's exception for acquisitions on behalf of tribes which ''have lands in one state but are located near the border of another state'' has been narrowed (to ensure that the land to be acquired is located near existing *trust* land). The term ''near'' has been retained (to be defined on a case-by-case basis, in the exercise of the Secretary's discretion).

*Section 151.11(b) Acquisitions in Non-Indian Communities*

*Comment:* Commenters objected to the provision which would require that tribes show that trust status is essential to the planned use of off-reservation property which is located ''within an urbanized and primarily non-Indian community.'' Commenters noted that the proposed rule would have the following anomalous results:

(1) Off-reservation acquisitions which would *not* have adverse jurisdictional impacts (i.e., where trust status is not essential to the planned use) would be prohibited, even thought he apparent purpose of the rule was to discourage gaming acquisitions and other acquisitions which *would* have such impacts;

(2) ''Low-impact'' off-reservation acquisitions within urban communities might be prohibited, even through ''high-impact'' on-reservation acquisitions within similar communities would be permitted;

(3) Tribal members how have relocated to urban communities would be denied the opportunity to benefit directly from many potential tribal economic development projects; and

(4) The cost of many tribal initiatives and federal housing projects would be driven up due to the relatively higher infrastructure costs associated with on-reservation construction.

Commenters criticized the proposed rule on the ground that the phrase ''urbanized and primarily non-Indian community'' was vague and over-broad, and one of the commenters expressed concern that the rule could possibly be applied to limit acquisitions in areas which are primarily rural in character.

Another commenter noted that, while trust status might not be essential for a particular use, the economic benefits to be derived from such use (which would also be covered by the proposed rule) could depend on trust status; it was thus suggested that the ''essential'' requirement be more clearly defined.

*Response:* 25 CFR 151.11(c) has been revised and the last sentence has been deleted. This change is based on the fact that the new 25 CFR 151.11(b) will already require that tribes whose reservations are not located in urban communities provide a ''greater justification'' when lands in such communities are to be acquired. [It is also anticipated that ''high-impact'' acquisitions in urban communities will be limited by the consultation process set forth in 25 CFR 151.11(d) of this Part.] The deletion of the last sentence is also based on the specific criticisms set forth in the comments, i.e., that the proposed rule would be ambiguous, anti-growth, and detrimental to tribes whose reservations are located in urban communities (and other tribes whose justifications would otherwise suffice).

*Section 151.11(c) Economic Development Plans*

*Comment:* Commenters suggested that economic development plans should not be needed when land is being acquired for non-commercial purposes.

*Response:* An introductory clause has been added to exempt non-business acquisitions.

*Comment:* Commenters also indicated that the proposed rule would undermine tribal sovereignty and self-sufficiency by:

(1) Allowing the BIA to second-guess tribal leaders' business decisions;

(2) Forcing the disclosure of confidential business information; and

(3) Preventing tribes from acquiring investment properties for future development.

*Response:* It should be noted that the likelihood of success of an off-reservation project has long been considered by the Secretary in deciding whether to accept title to the underlying lands in trust status. [It should also be noted that the feasibility of the proposed use would already be considered pursuant to 25 CFR 151.10(c), which will be incorporated at 25 CFR 151.11(a) of this Part.]

*Comment:* Another commenter suggested that pre-acquisition planning would necessarily be so speculative as to be of minimal value, and one commenter recommended that the planning requirement be made applicable to only those acquisitions which are opposed by local governing bodies.

*Response:* 25 CFR 151.11(c) of this Part will merely require that the acquiring tribe has a plan for the *immediate* development or utilization of the property, and that the plan reflects that a prudent buyer would complete the acquisition (given the projected return on investment, incidental benefits, and risks associated with the proposed use). It should be noted that certain confidential business