CALIFORNIA GAMBLING CONTROL COMMISSION

FINAL STATEMENT OF REASONS

CGCC-GCA-2012-04-R

HEARING DATE: **November 1, 2012**

SUBJECT MATTER OF PROPOSED REGULATIONS: **Notice of Change in Contact Information and Notice of Relocation of Gambling Establishment**

SECTIONS AFFECTED: **California Code of Regulations, Title 4, Division 18:** Sections 12004 and 12364

UPDATED INFORMATION:

The Initial Statement of Reasons, as published on August 17, 2012, is included in the file and is hereby incorporated by reference as if fully set forth herein. The information contained therein is updated as follows:

Proposed Action:

This proposed action would make the following specific changes within Division 18 of Title 4 of the California Code of regulations:

Section 12004

Section 12004 is amended to clarify that any change of contact information must be reported to the Bureau within 10 days of such change. The Bureau must have up-to-date contact information for all licensees in order to properly notify individuals of any information that may be of interest. The relevant form (CGCC-032) with which to notify the Bureau of such changes is updated and the date is changed accordingly. Additionally, amendments are made to clarify that this section does not apply to the physical relocation of a gambling establishment.

- CGCC-032 (Rev. 06/12) – The previous version of the form, *Notice of Address Change, CGCC-032 (New 06-05),* is repealed and replaced with new version *Notice of Contact Information Change, CGCC-032 (Rev. 06/12).* The form is streamlined and removes some of the superfluous information (e.g., previous address and previous phone number). Spaces are added to include the individual's license, permit, or registration number and type to ensure proper routing within the Bureau.

Section 12364

This regulation establishes a streamlined process by which a gambling enterprise planning a physical relocation of its gambling establishment must receive approval for a new location from

the local governing jurisdiction and then notify the Bureau of that proposed relocation. Specifically, the proposal does the following:

Subsection (a) defines:

- (1) "Neighboring jurisdiction" to be a jurisdiction adjoining the boundary line of the jurisdiction in which the gambling establishment is located and also when within 1,000 feet of the proposed new location of the gambling establishment. This definition is included to clarify which jurisdictions are able to object to a proposed new location.

- (2) "Relocation" to be the physical relocation of a gambling establishment or associated building, grounds or parking lot, to a parcel that is not contiguous to the current parcel. This definition is included to clarify the circumstances under which an establishment has undergone a "relocation" rather than a "remodel."

Subsection (b) requires an owner-licensee to notify the Bureau of a planned relocation of a gambling establishment at least 90 days in advance of the intended commencement of gambling operations, using a newly-created form, CGCC-050 (New 06/12). A 90-day advance notification of relocation is intended to be sufficient time for the Bureau to work with the owner-licensee to schedule a site visit and provides notice to the Bureau to expect to receive the required documentation. In addition to the form, the gambling establishment is required to submit a draft floor plan for the new establishment. This is to allow the Bureau to make comments before the process is so far along that any required changes would necessitate the gambling establishment redoing any construction, incurring additional costs or being excessively delayed.

- CGCC-050 (New 06/12) – This new form is to be used to notify the Bureau of the planned physical relocation of a cardroom. Once received by the Bureau, it will be scanned into the joint Commission/Bureau Licensing Information System database and the Commission staff will be notified electronically.

    - Section 1 requests basic information from the owner-licensee, including the name of the owner-licensee, license number, name of the gambling establishment, the previous address, the new address, the new phone and fax numbers, the date of the planned commencement of gambling operations, and the local jurisdiction. The local jurisdiction is requested so that the Bureau can confirm the gambling establishment will be operating within the requirements of the local gambling ordinance.

      This section also includes a place to indicate whether or not the new location is within 1,000 feet of the boundary line of the local jurisdiction. The regulation provides for different procedures to be followed depending on the distance of the new location from the boundary line of the local jurisdiction, as detailed further below.

    - Section 2 provides a summary of the required documentation that must be provided to the Bureau prior to the commencement of the associated activity [see subparagraphs

(A) through (D) of paragraph (1) of subsection (b) of Section 12364]. This provides a convenient reference for those completing the form.

- Section 3 applies only to those gambling establishments that will be located within 1,000 feet of the boundary line of the local jurisdiction. Subparagraph (A) of paragraph (2) of subsection (b) of Section 12364 requires the owner licensee to obtain documentation from a neighboring jurisdiction confirming that the neighboring jurisdiction has no concerns with the location. Section 3 of form CGCC-050 provides a convenient location for the appropriate individual in the neighboring jurisdiction to indicate there are no concerns with the location.

  As an alternative to obtaining prior approval of neighboring jurisdiction, the gambling establishment may choose to notify the Bureau that the required notice pursuant to subparagraph (B) of paragraph (2) of subsection (b) of Section 12364 has been sent to the neighboring jurisdiction or that the gambling establishment is exempt pursuant to subparagraph (C) of paragraph (2) of subsection (b) of Section 12364.

- Section 4 includes the standard declaration and signature included on all Commission forms.

- Paragraph (1) addresses circumstances in which the new location of the gambling establishment will not be within 1,000 feet of the boundary line of the local jurisdiction. The Commission believes that the Act provides primary responsibility for the location of gambling establishments to the local governing jurisdiction, and does not desire to intercede in what is seen as a local zoning issue. The focus of the Commission is to ensure that laws and regulations concerning the operation of gambling establishments are complied with, and that public safety and the integrity of the gambling operation are adequately protected. To that end, paragraph (1) requires that the following information be submitted to the Bureau prior to the commencement of gambling operations.

  - Subparagraph (A): A copy of the rental or lease agreement, or evidence of the owner-licensee's ownership of the new location. The Act[1] allows the Commission to require the licensure of "any person who owns an interest in the premises of a licensed gambling establishment or in real property used by a licensed gambling establishment." By reviewing the copy of the rental or lease agreement, the Bureau can determine if any other persons need to be licensed and make a recommendation to the Commission.

  - Subparagraph (B): A copy of the licensee's fully executed fire safety and evacuation plan for the new location. Title 4, CCR, Section 12370, requires all licensees to have fire safety and evacuation plans in place. This will enable the Bureau to determine whether the licensee's plan has been revised to conform to the configuration of the new establishment.

[1] Business and Professions Code section 19853

- Subparagraph (C): A copy of the licensee's security and surveillance plan. Section 12372, CCR Title 4, requires all licensees to have a security and surveillance plan in place. This will enable the Bureau to determine whether the licensee's plan has been revised to conform to the configuration of the new establishment.

- Subparagraph (D): Documentary evidence of all required approvals, licenses, and permits by any applicable local jurisdictional entity. The Commission wants to ensure that the gambling establishment is in a location that has been approved by the local jurisdiction and this requirement will assist the Bureau in performing their review.

- Subparagraph (E): Documentary evidence of all required approvals, licenses, and permits by any applicable state or federal agency. This would include, but is not limited to, check cashing permits or liquor licenses. The evidence of such permits is not required to be submitted prior to the commencement of gambling operations, but rather prior to the commencement of the associated activity. Some activities, such as the serving of alcohol, may lag behind the opening of the new establishment for gambling purposes. There is no need to require permits or licenses not directly associated with gambling operations to be in place before gambling operations begin.

- Paragraph (2) addresses circumstances in which the new location of the gambling establishment will be within 1,000 feet of the boundary line of the local jurisdiction. Although the Act assigns primary authority to local governments to determine the location of gambling establishments, the Commission is granted some authority to ensure that the interests of residents in neighboring jurisdictions are protected. Thus, if the gambling establishment is to be located near the boundary of a local jurisdiction, and the neighboring jurisdiction may potentially realize impacts from the location of that gambling establishment, the Commission wishes to ensure that the impacts on that neighboring jurisdiction have been considered.

  California local jurisdictions typically use 1,000 feet as the standard "buffer zone" from which businesses with potential secondary effects (such as adult businesses or medical marijuana dispensaries) must be distanced from schools, churches, public libraries, public parks, hospitals, or other youth-oriented or sensitive locales. At this time, the Commission sees no need to treat gambling establishments with stricter scrutiny than is the standard for other adult-oriented businesses.

  - Subparagraph (A) requires the owner-licensee to submit documentation from the appropriate official in the appropriate agency or department attesting that the neighboring jurisdiction has no objections to the proposed location of the gambling establishment. This will provide sufficient assurances that the possible impacts to the neighboring jurisdiction have been considered.

  - Subparagraph (B) provides an alternative to obtaining the neighboring jurisdiction's prior approval of the location. The owner-licensee may instead notify the

neighboring jurisdiction of the planned relocation at the same time as the Bureau is notified. The notice shall include the requirements for the neighboring jurisdiction to submit objections, if any to the Bureau.

If the neighboring jurisdiction objects, the regulation requires the objection to be based upon evidence of probable negative effects resulting from the relocation of the gambling establishment or proof that the legitimate interests of the residents in the neighboring jurisdiction are threatened. The appropriate role for the Commission in terms of the locations of gambling establishments is to ensure that the public interest has been protected. Local jurisdictions, when determining zoning issues, have mechanisms in place to address the needs of their residents. There are not likely to be any mechanisms in place to address the needs of residents in a neighboring jurisdiction, leaving a potential gap appropriately filled by the Commission.

- Subparagraph (C) provides criteria for exceptions to the requirement to notify or obtain approval from a neighboring jurisdiction when a gambling establishment is already located within 1,000 feet from a boundary line. This exemption is predicated upon a relocation not exceeding a maximum distance based on the current distance from the boundary line. This provision has been included because small relocations should not provide significant additional secondary effects to a neighboring jurisdiction to warrant another location discussion.

Subsection (c)

- Paragraph (1) provides direction to the Commission and Bureau when a neighboring jurisdiction files an objection with the Bureau pursuant to subparagraph (B) of paragraph (2) of subsection (b). Commission review is required to mediate any objections to the new location, determine if the location is suitable and if the local jurisdiction's regulations are sufficient to protect the residents of the neighboring jurisdiction. Location suitability will be determined on a case-by-case basis.

- Paragraph (2) provides that if an owner-licensee obtains documentation from a neighboring jurisdiction pursuant to paragraph (2) of subsection (b) or if the neighboring jurisdiction does not submit timely objections to the Bureau, the Commission review will not be required and the process may proceed in accordance with paragraph (1) of subsection (b). This provision is to streamline the review process by not requiring Commission review when no objections have been filed with the Bureau. The Commission retains discretion to hold a suitability review meeting without objection, to be determined on a case-by-case basis.

Subsection (d) requires the Bureau to schedule and conduct a site visit of a new location prior to the commencement of gambling operations to ensure that specified internal controls meet existing regulatory standards. A written report of the findings must be provided to the Commission as well as any follow-up reports. Paragraph (2) requires the Bureau to issue a notice to correct any noted deficiency, specifying a reasonable time in which the deficiency is to be corrected. This paragraph also limits the circumstances under which a noted deficiency can

delay the commencement of gambling operations to those cases in which the deficiency prevents substantial compliance with laws or regulations and materially threatens public safety or the integrity of gambling operations, and cannot be cured or mitigated within a reasonable time. This provision balances the need of the State to confirm the safety and proper operations in a gambling establishment while respecting the investment and business needs of the owner-licensee. As a gambling establishment's most vulnerable time is immediately after opening it is imperative that there is compliance with minimum internal controls.

Subsection (e) states that gambling operations may not be conducted at the new location until the required notifications and reviews have been completed. This provision clarifies that gambling operations may not begin until the gambling enterprise is in compliance with all of the requirements of Section 12364.

Subsection (f) explicitly applies the disciplinary provisions of Chapter 10 to violations of subsection (e). This provision is included to ensure that all gambling enterprises are aware of the possible consequences of violations.

Subsection (g) explicitly applies the disciplinary provisions of Chapter 10 to violations of subsection (b). This provision is included to ensure that all gambling enterprises are aware of the possible consequences of violations.

UNDERLYING DATA:

Technical, theoretical, or empirical studies or reports relied upon:

None.

REQUIRED DETERMINATIONS:

Local Mandate:

A mandate is not imposed on local agencies or school districts.

BUSINESS IMPACT:

The Commission has determined that the adoption of these regulations would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This regulation modifies the process by which a relocation of a gambling establishment is addressed by the Commission and the Bureau. Specifically, rather than requiring prior Commission approval for any relocation, this regulation requires only *notification* to the Bureau for the majority of relocations. In a small number of cases, the relocation may have to be reviewed by the Commission; however, the review process would not differ significantly in terms of cost to businesses from the current process.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California.

BENEFITS OF PROPOSED REGULATION:

This proposed action will likely result in a minor decrease in the costs associated with a gambling establishment's relocation, as the owner-licensee would not need to appear before the Commission at a public hearing in the majority of relocations. This proposal decreases the uncertainty regarding relocating a gambling establishment. Under the existing practice, there is no certainty that the Commission will approve a new location. Under this proposal, there is no need, except in limited cases, for the Commission to approve the location. If the owner-licensee receives the necessary approvals required by the local governing jurisdiction as to the proposed location, there would be no need for approval by the Commission. The owner-licensee would be required only to notify the Bureau of the change of location and be inspected.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the regulation is proposed, would be as effective as and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

(1) Maintain Status Quo: Because the Commission considers each request to relocate a gambling establishment on a case-by-case basis, one alternative to the proposed regulation is to continue with the current practice. This alternative was rejected because of the uncertainty it creates for owner-licensees. Without knowing for certain if the Commission will approve of a proposed location, owner-licensees may be hesitant to make investments of time and money toward what can be a critical business decision – the location of the facility. Furthermore, the location of a gambling establishment is essentially a local jurisdictional issue.

(2) Require Advance Commission Approval: The second alternative considered and rejected by the Commission was to expressly require advanced Commission approval of all gambling establishment location changes. This alternative is similar to the current process, except that it would be formalized in regulation. Ultimately, this alternative was rejected as being unnecessarily burdensome, duplicative of location jurisdiction oversight, and not in keeping with the spirit of the Act. As previously discussed, the Act places primary authority for the approval of gambling establishment locations with local jurisdictions. Rather than second-guess or duplicate the oversight provided by a local

jurisdiction, the Commission would rather place its focus on the gambling operations conducted in the new location.

(3) Allow the Bureau to Review New Locations after Commencement of Gambling Operations: The Commission considered allowing a gambling establishment to commence operations prior to any review by the Bureau. This option was considered because there was concern that the Bureau would be unable to provide the required reviews within the timelines of the gambling establishment and commencement of gambling operations would be delayed. Ultimately, this alternative was rejected due to safety concerns. A gambling establishment is at its most vulnerable during its initial opening due to new facilities, new employees, new practices and unfamiliar faces. Therefore the Commission decided that the security and surveillance plan must be reviewed prior to operations. Additionally, the regulations were modified to include a timeline requirement for Bureau site review.

(4) Prevent Gambling Operations for Any Deficiency with Laws and/or Regulations: This alternative was considered to ensure that the State is not condoning the operations of a gambling establishment that is not in compliance with all laws and regulations. The Commission decided that such a policy did not follow with the Commission's desire to have regulations that protect the public while supporting business. There are many forms of non-compliance under which a gambling enterprise would be allowed to continue to operate at an existing location, and a consistent policy should be adopted for reopening after relocation. Notification of these minor violations is provided to the gambling establishment, and if uncorrected can be taken into consideration when the gambling establishment requests renewal of their license, or can be addressed in a formal administrative disciplinary action, if necessary.

COMMENTS, OBJECTIONS OR RECOMMENDATIONS / RESPONSES:

The following public comments/objections/recommendations were made regarding the proposed action during the various public comment periods:

A. 45-DAY WRITTEN COMMENTS

The following written comments/objections/recommendations were received regarding the text or the proposed action during the 45-day comment period that commenced August 17, 2012 and ended October 1, 2012:

ADOPT SECTION 12364. RELOCATION OF GAMBLING ESTABLISHMENT.

This proposed action would establish new Section 12364 within Article 7. Section 12364 would require cardrooms to notify the Bureau of Gambling Control (Bureau) of any pending relocation of facilities, define what relocation is and provide requirements for relocation.

1. Subsection (a), defines a "physical relocation" to be the relocation of a gambling establishment to a site for which a different parcel number has been assigned by the county assessor.

a. **Alan Titus, for Artichoke Joe's:** Mr. Titus, expressed concerns that the original proposed definition of "relocation" was broader then was intended by the Commission; specifically that it would cause larger establishments that are only moving within their current multi-parcel lot to be subject to relocation rules. The following text was suggested:

> (a) For the purposes of this Section, "relocation" means the physical relocation of a gambling establishment, including the buildings, grounds and parking lots from one site consisting of one or more contiguous parcels ~~location~~ to another site, consisting entirely of different parcels ~~location for which a different parcel number has been assigned by a county assessor~~. Relocation does not include expansion where a portion of the operation continues to be conducted on the old site.

b. **Keith A. Sharp, for Hawaiian Gardens Casino (HGC):** Mr. Sharp generally questions the necessity of these regulations and asserts that relocations are purely a matter of local regulation. Mr. Sharp expressed that the proposed text needlessly includes gambling establishments that occupy numerous parcels and simply desire to relocate within their current space. It is also unclear if "relocation" would include an addition to an existing gambling establishment. He suggested that the definition should clarify that it is limited to the physical movement of the entire gambling establishment to another location and does not include additions such as remodeling.

Response (a and b): These comments were accepted and the proposed action was modified as follows to accommodate them:

> (a) For purposes of this section,
> (2) "~~r~~Relocation" means the physical relocation of a gambling establishment, including the buildings, grounds and parking lots, from one ~~location~~ site consisting of one or more contiguous parcels to another ~~location~~ site, consisting entirely of different parcels ~~for which a different parcel number has been assigned by a county assessor~~. Relocation does not include the addition of new, contiguous parcels to the current site or modification of existing buildings.

2. Subsection (b) requires an owner-licensee to notify the Bureau of a planned physical relocation of a gambling establishment at least 90 days in advance of the intended commencement of gambling operations, using a newly created form, CGCC-050 (New 06/12).

a. **Martin J. Horan, IV, Acting Chief, Bureau:** Mr. Horan requests that the regulations, in addition to the reference in proposed form CGCC-050, "Notice of Relocation," refer to Title 11, California Code of Regulation, Section 2037(a)(1)(J).

Response (a): This recommendation was rejected. Specific reference to the deposit is already included in Form CGCC-050. Additional reference in the regulation text would be unnecessary and redundant.

3. Subsection (b), paragraph (1) requires the submittal of basic information from the owner-licensee, plus copies of business documents such as rental or lease agreement, fire safety and evacuation plan, security and surveillance plan, local jurisdictional approvals and any other state or federal approvals that may be required.

a. **Martin J. Horan, IV, Acting Chief, Bureau:** Mr. Horan requests the addition of a time frame to the submittal requirements because without a time frame there is no assurance that the Bureau will have sufficient time to fully review and accept the documentation prior to the commencement of gambling operations.

b. **Keith A. Sharp, for HGC:** Mr. Sharp requests that approvals required to be submitted be limited to just those related to gambling operations. He notes that approvals such as food and beverage permits should not hold up gambling operations even if it holds up the operations of other parts of the business.

Response (a and b): These comments were accepted and the proposed action was modified to accommodate them. A time frame of 30 days prior to either the commencement of gambling operations or a site visit by the Bureau has been included to address Mr. Horan's request. This time frame should provide the Bureau with a reasonable amount of time to conduct a review of the specified documents. To address Mr. Sharp's concern, subparagraph (E) has been further clarified to show it has a separate timeline than paragraphs (A) through (D). The documentation required by subparagraph (E) does not have to be provided prior to the commencement of gambling operations. The specific modifications are as follows:

> (1) If the new location is more than 1,000 feet from any boundary line of its governing local jurisdiction, the owner-licensee shall~~, except as otherwise provided,~~ submit to the Bureau all of the following information and documents, of which the information and documents specified in subparagraphs (A) through (D) inclusive are to be submitted no later than thirty (30) days prior to either the commencement of gambling operations or the Bureau's site visit conducted pursuant to subsection (d), whichever first occurs:
>
> …
>
> (E) Documentary evidence of the issuance to the licensee of all required approvals, licenses and permits, other than those specifically relating to gambling operations, by any applicable state or federal agency concerning the new location; e.g., liquor licenses, check cashing permits, etc. These documents are not required to be submitted prior to the commencement of gambling operations or the Bureau's site visit pursuant to subsection (d), but must be ~~received by~~ submitted to the Bureau prior to the commencement of the associated activity.

4. Subsection (b), paragraph (2) addresses circumstances in which the new location of the gambling establishment will be within 1,000 feet of the boundary line of the local jurisdiction. The owner-licensee would be required to obtain the signature of the appropriate official in the appropriate agency or department in the neighboring jurisdiction confirming that the neighboring jurisdiction has no objections to the proposed location of the gambling establishment.

If the neighboring jurisdiction objects, the regulation requires the objection to be based upon evidence of probable negative effects resulting from the location of the gambling establishment or proof that the legitimate interests of the residents in the neighboring jurisdiction are threatened.

a. **Alan Titus, for Artichoke Joe's:** Mr. Titus expressed concern that obtaining consent of a neighboring jurisdiction could be difficult. It was suggested that licensee be required to give notice to any neighboring jurisdictions and provide them the opportunity to object. Mr. Titus also expressed concerns over what objections would be considered "legitimate". He indicates that the largest single factor that impacts the neighboring jurisdiction is the size of the cardroom. Mr. Titus suggests that size should determine the type of objections that can be raised and who has the burden of proof. For Tier I or II cardrooms, the neighboring jurisdiction's concerns should be limited to location, concentration and impact on law enforcement. For bigger cardrooms, negative effects are more likely and any issue should be heard. Tier IV or V cardrooms should have the burden of proof to establish that a neighboring jurisdiction's objections are invalid, while for cardrooms in the lower Tiers the burden should be on the neighboring jurisdiction.

b. **David Fried – California Gaming Association (CGA):** Mr. Fried expressed concern regarding the difficulty for a business in one city to get an "affirmative" vote from a neighboring jurisdiction. Mr. Fried suggests revisions to have the gambling establishment provide a written notice to the neighboring jurisdiction and allow the neighboring jurisdiction to decide whether to file written objections under a specified timeline within which a licensee and neighboring jurisdiction must discuss any concerns of the neighboring jurisdiction. The following suggested timeline was provided:

- 120 days before move: Licensee must contact neighboring jurisdiction
- 90 days before: Notice Bureau and Commission, with copy of notice to neighboring jurisdiction
- 75 days before: Deadline for neighboring jurisdiction to file objections
- 45 days before: Commission holds hearing on any objections

Establishments already within 1,000 feet should be exempt from this requirement. Also, the language reflecting what the neighboring jurisdiction should be allowed to

object to should be limited to "why the host jurisdiction's regulation is inadequate to protect the health, safety or welfare of citizens of the neighboring jurisdiction."

c. **Keith A. Sharp, for HGC:** Mr. Sharp expressed, subject to his general rejection of these regulations as unneeded, concern that receiving approval from neighboring jurisdictions can be an impossible task as is not to the benefit to the neighboring jurisdiction to issue concurrence. The following three fixes were suggested:

- First, require one government entity/jurisdiction to provide another entity/jurisdiction with written notice and opportunity to lodge concerns or objections. The recipient would be required to file such objections within the stated time period with the Commission and the Bureau. A hearing would be required to be held expeditiously, if the objections meet the necessary threshold.
- Second, exempt the gambling establishment from the requirements of paragraph (2) of subsection (b) if it is within 1,000 feet of a neighboring jurisdiction. Alternately, if the Commission believes that such an exception is not acceptable, establish a standard to require the gambling establishment to comply with the regulations if it moves more than 500 feet closer to the boundary.
- Third, exempt the gambling establishment if it engages in a process that otherwise provides neighboring cities with notice and an opportunity to be heard regarding any issues or objections, such as the preparation of an environmental impact report in connection with the relocation. As judicial redress is available for cities that continue to object, it is unnecessary to provide neighboring cities with another opportunity to object and defeat the relocation.

d. **Jeffrey Sinsheimer, for Bay 101:** Mr. Sinsheimer expressed concern that the burden should be put on the neighboring jurisdictions to object to the relocation and to demonstrate that the probable negative effects of the relocation harm residents. Without this placement of the burden, Mr. Sinsheimer expressed concern that the regulations could cause an indefinite delay in the commencement of gambling activities. Mr. Sinsheimer suggests that the regulations be revised to provide a fair process with concrete deadlines based on the standards of the Gambling Control Act.

- 180 days before commencement of gambling operations: The licensee must provide notice to the neighboring jurisdiction if it plans to locate within 1000 feet of the neighboring jurisdiction.
- 150 days before: The neighboring jurisdiction must apply to the Commission to stop the commencement of gambling activities.
- 120 days before: The Commission must hold a public hearing to determine merits of the application. The burden is on the neighboring jurisdiction to show that the gambling activities are inconsistent with the Gambling Control Act.

- 60 days before: The Commission is required to issue its findings on the merits of the neighboring jurisdiction's application.

Response (a, b, c and d): These comments were accepted and the proposed action was modified as follows to accommodate them:

(2)(A) If the new location is 1,000 feet or less from any boundary line of its governing local jurisdiction, the owner-licensee shall, in addition to the documentation required by paragraph (1), and prior to the commencement of gambling operations, submit ~~signed~~ documentation from the appropriate agency or department in the neighboring jurisdiction confirming that the agency or department has no objection~~s~~ to the planned location of the gambling establishment.

(B) As an alternative to obtaining advance confirmation, the licensee may submit to the appropriate agency or department in the neighboring jurisdiction, a copy of its Notice of Relocation concurrent with the submission to the Bureau. The licensee shall provide the Bureau with proof of submission of the notice to the neighboring jurisdiction. The copy of the notice submitted to a neighboring jurisdiction shall be accompanied by a written statement from the licensee which, at a minimum, shall include the following information:

"The appropriate agency or department of [name of neighboring jurisdiction] may submit objections to the proposed relocation of [name of gambling establishment] to the Bureau of Gambling Control, at Post Office Box 168024, Sacramento, CA 95816-8024. Any objections to the proposed location must be received by the Bureau within 45 days of the date of this notice and must be based upon evidence of probable negative effects resulting from the gambling establishment's relocation or proof that the legitimate interests of residents in the neighboring jurisdiction are threatened. ~~For purposes of this section, "neighboring jurisdiction" means any other adjoining jurisdiction whose common boundary line with the governing local jurisdiction is 1,000 feet or less from the proposed new location of the gambling establishment.~~

(C) This paragraph does not apply to a gambling establishment that is all of the following:

1. Already located 1,000 feet or less from any boundary line;

2. After the relocation, it will continue to be within 1,000 feet of same neighboring jurisdiction;

3. Any reduction in distance is less than half of the current distance from the same boundary line; and,

4. Any distance moved parallel to the boundary line is less than half of the current distance from the same boundary line.

(c)(1) If an owner-licensee ~~cannot obtain the signed~~ does not provide documentation from a neighboring jurisdiction as provided in

~~required by~~ subparagraph (A) of paragraph (2) of subsection (b), and the Bureau receives objections to the relocation from a neighboring jurisdiction, the gambling establishment shall not be relocated without Commission review. ~~To request Commission review, the owner-licensee shall submit the Notice of Relocation form to the Bureau and so indicate. A document describing all efforts made to obtain the confirmation specified in paragraph (2) of subsection (b) shall be included with the request.~~ The Bureau shall forward the relocation ~~review request shall be forwarded~~ notice to the Commission within 10 days of ~~its~~ receipt ~~by the Bureau~~ of objections from any neighboring jurisdiction for placement on a Commission agenda for consideration. The Commission shall notify the objecting neighboring jurisdiction, the Bureau, and the licensee of the time and place of the Commission hearing at least 10 days prior to the hearing in order for all parties ~~representatives of that jurisdiction~~ to have the opportunity to attend and be heard.

(2) If an owner-licensee obtains documentation from a neighboring jurisdiction as provided in paragraph (2) of subsection (b), or if the Bureau does not receive timely objections to the relocation from a neighboring jurisdiction, no Commission review shall be required and the Bureau may proceed as if paragraph (2) of subsection (b) did not apply.

5. Subsection (d), provides that the Bureau will perform a site visit at the new location no later than 30-days after the commencement of operations and notes what the Bureau should review and how any inconsistences should be addressed. The proposal offered two options for public comment which differ in the extent of the Bureau's review, the time frame for the review, and in the potential actions for deficiencies.

a. **Alan Titus, for Artichoke Joe's:** Mr. Titus suggested that any regulation for site review for relocation should be the same or similar to any site review required for new locations. Mr. Titus noted that there are currently no existing regulations requiring site review for new locations. He suggested that this item be addressed instead in a new rulemaking file that includes regulations for both relocation and initial locations.

Response (a): This recommendation is rejected. While Staff agrees that a site review should be considered for an initial location, it is not necessary to withdraw this subsection of the proposed regulations. These proposed regulations deal specifically with relocations. If the Commission were to consider adopting requirements for a site visit for initial gambling establishment locations that could be done separately. However, the current moratorium on the issuance of new gambling licenses makes this unnecessary. Currently, the only initial licenses issued by the Commission are for the purchasers of existing cardroom businesses that already occupy existing gambling establishments. If the existing establishment is to be relocated as the result of a sale, this regulation would

address the issue of a site visit. There is no immediate need to address site visits for initial locations, as the moratorium is in place.

b. **Martin J. Horan, IV, Acting Chief, Bureau:** Mr. Horan made a recommendation for an Option 3 that would require an investigative analysis of the documents submitted pursuant to paragraph (1) of subsection (b) and would provide for two site visits, one before commencement of gambling operations and one within 30 days after the commencement of gambling operations. Mr. Horan's suggestion would prevent the commencement of gambling operations until all approvals have been obtained and all deficiencies have been corrected.

> "(d)(1) The Bureau shall conduct a relocation investigative analysis of the documents required in subdivision (b)(1)(A)-(D). The Bureau will schedule and conduct a site visit prior to the commencement of gambling operations at the new location and within 30 days after the commencement of gambling operations, to ensure at a minimum that the following internal controls meet the requirements of Article 3 of Chapter 7:
> (A) Drop and drop collection, pursuant to Section 12384;
> (B) Count and count room functions, pursuant to Section 12385;
> (C) Cage functions, pursuant to Section 12386;
> (D) Security, pursuant to Section 12395; and,
> (E) Surveillance, pursuant to Section 12396.
> (2) If the Bureau notes any deficiency in the internal controls listed in subparagraphs (A) through (E) or any other deficiencies in compliance with laws and/or regulations which would materially threaten public safety or the integrity of gaming, it shall issue a notice to the owner-licensee of describing the nature of the deficiency. The notice shall specify a reasonable time in which the deficiency is to be corrected. Failure to correct or otherwise mitigate the deficiency to the satisfaction of the Bureau may be considered during the license renewal process and/or may result in disciplinary action under Chapter 10 of this division.
> (e) No gambling operations may be conducted at any new location until all the require approvals have been obtained and the provisions of subsections (b), (c), if applicable, and (d) have been complied with, and any noted deficiencies pursuant to relevant statues have been corrected."

Response (b): Mr. Horan submitted Option 3 for the Commission's consideration as a compromise between Option 1 and Option 2. This recommendation was accepted, in part, and considered in the modifications of subsection (d) in staff's proposed Option 4. Option 4 is an attempt to further refine these provisions and to address the concerns of other comments (see response to No. 6, comments a, b, and c, below). It is noted that Option 3 would require the Bureau to conduct a "relocation investigative analysis" (undefined) of documents required in subdivision (b)(1)(A)-(D). While it is

acknowledged that the Bureau will need to analyze some of these documents, this is an internal business process that does not need to be referenced in this regulation. Option 3 would also require the Bureau to conduct a site visit before the gambling operations commence at the new location *and* within 30 days after gambling operations commence. As the Bureau currently has the authority to conduct compliance reviews after gambling operations commence, it is not necessary to reference a second site visit in the regulation. Staff's proposed Option 4 is as follows:

> (d)(1) The Bureau shall schedule and conduct a site visit prior to the commencement of gambling operations at the new location or within 30 days after the commencement of gambling operations. A written report of the findings of the site visit shall be provided to the Commission, as well as any follow-up reports. The Bureau's site visit report shall include determinations regarding compliance with, at a minimum, the following internal control requirements of Article 3 of Chapter 7:
>
> (A) Drop and drop collection, pursuant to Section 12384;
> (B) Count and count room functions, pursuant to Section 12385;
> (C) Cage functions, pursuant to Section 12386;
> (D) Security, pursuant to Section 12395; and,
> (E) Surveillance, pursuant to Section 12396.
>
> (2) If the Bureau notes any deficiency in compliance with laws or regulations, including but not limited to, a deficiency in the internal controls listed in paragraph (1), it shall issue a notice to the owner-licensee to correct the deficiency. The notice shall describe each deficiency and specify a reasonable time in which the deficiency is to be corrected. The commencement of gambling operations shall not be delayed nor the operation suspended unless the deficiency prevents substantial compliance with laws or regulations and materially threatens public safety or the integrity of the gambling operation, and the deficiency cannot be corrected or mitigated within a reasonable time. Any action to suspend gambling operations under this section shall be taken pursuant to Business and Professions Code section 19931. Failure to correct or otherwise mitigate the deficiency may be considered during the license renewal process and may result in disciplinary action under Chapter 10 of this division.
>
> (e) No gambling operations may be conducted at any new location until the provisions of subsections (b) and, if applicable, (c), have been complied with.

6. Subsection (d), Option 1, requires the Bureau to schedule and conduct a site visit of the new location prior to the commencement of gambling operations or within 30 days after commencement. The Bureau is required to issue a report, as well as notices to correct any deficiencies. There are also limits to the circumstances under which a noted deficiency can delay or suspend the commencement of gambling operations.

a. **Jeffrey Sinsheimer, for Bay 101:** Mr. Sinsheimer states that any licensee involved in relocation already has experience complying with the Gambling Control Act and gambling regulations and should be able to commence gambling operations prior to the Bureau's visit. Therefore, Option 1 is preferred over Option 2.

b. **David Fried, for CGA:** Mr. Fried states that gambling operations should be delayed only if there is a material problem in the new facility. Option 1 still leaves it to the Bureau to determine which problems are material versus trivial, but this is preferred over automatically deferring gambling operations. Therefore Option 1 is preferred over Option 2.

c. **Keith A. Sharp, for HGC:** Mr. Sharp states, that subject to his general rejection of these regulations as unneeded, Option 1 is preferred over Option 2, as Option 1 provides flexibility in remedying minor deficiencies without delaying gambling operations.

Response (a, b and c): These recommendations were accepted, in part, and considered in the modifications of subsection (d), in staff's proposed Option 4 above (see No. 5, comment b, above).

7. Subsection (d), paragraph (2), Option 1, requires the Bureau to issue a notice to correct any noted deficiency, specifying a reasonable time in which the deficiency is to be corrected. This paragraph also limits the circumstances under which a noted deficiency can delay or suspend the commencement of gambling operations.

a. **Martin J. Horan, IV, Acting Chief, Bureau:** Mr. Horan requests the word "substantial" be removed, as otherwise it would allow gambling establishments who are not in compliance to continue operations. He offered the following suggested revisions:

> (d)(2) If the Bureau notes any deficiency, it shall issue a notice to correct the deficiency. The notice shall specify a reasonable time in which the deficiency is to be corrected. The commencement of gambling operations shall not be delayed nor the operation suspended unless the deficiency prevents ~~substantial~~ compliance with laws or regulations and materially threatens public safety or the integrity of the gambling operation, and the deficiency cannot be cured or mitigated within a reasonable time. Failure to correct or otherwise mitigate the deficiency may be considered during the license renewal process and may result in disciplinary action under Chapter 10 of this division.

Response (a): This recommendation was rejected. The intent is to allow gambling operations to continue while any minor deficiencies are being addressed. It is not the intent to stop gambling operations for items that don't seriously endanger the public's

health, safety or general welfare or the integrity of the gambling operations. To clarify this point the following modification was proposed:

> (2) If the Bureau notes any deficiency in compliance with laws or regulations, it shall issue a notice to the owner-licensee to correct the deficiency. The notice shall describe each deficiency and specify a reasonable time in which the deficiency is to be corrected. The commencement of gambling operations shall not be delayed nor the operation suspended unless the deficiency prevents substantial compliance with laws or regulations and materially threatens public safety or the integrity of the gambling operation, and the deficiency cannot be ~~cured~~ corrected or mitigated within a reasonable time. Any action to suspend gambling operations under this section shall be taken pursuant to Business and Professions Code section 19931. Failure to correct or otherwise mitigate the deficiency may be considered during the license renewal process and may result in disciplinary action under Chapter 10 of this division.

8. Subsection (d), paragraph (1), Option 2, requires the Bureau to conduct a site visit of the new location prior to the commencement of gambling operations to ensure that specified internal controls meet existing regulatory standards.

a. **Martin J. Horan, IV, Acting Chief, Bureau:** Mr. Horan expressed concern that the specific list of minimum internal controls would limit any Bureau review to only those items listed and would prevent the Bureau from commenting on any other issues that may be observed. He offered the following suggested revisions:

> (d)(1) The Bureau shall schedule and conduct a site visit prior to the commencement of gambling operations at the new location to ensure at a minimum that the following internal controls meet the requirements of Article 3 of Chapter 7:
>
> …
>
> (2) If the Bureau notes any deficiency in the internal controls listed in subparagraphs (A) through (E) or any other deficiencies with laws or regulations which would materially threaten public safety or the integrity of gaming, it shall issue a notice to the owner-licensee of the nature of the deficiency. Gambling operations may not begin until ~~any~~ all documented deficiencies have been corrected ~~addressed~~.

Response (a): This recommendation was accepted in part. It is not the intent to limit the Bureau's review. The following modification was proposed:

> (d)(1) The Bureau shall schedule and conduct a site visit prior to the commencement of gambling operations at the new location to ensure at a minimum that the following internal controls meet the requirements of Article 3 of Chapter 7:

…

(2) If the Bureau notes any deficiency in compliance with laws or regulations, including but not limited to, a deficiency in the internal controls listed in ~~subparagraphs (A) through (E)~~ paragraph (1), it shall issue a notice to the owner-licensee ~~of the nature of~~ to correct the deficiency. The notice shall describe each deficiency and specify a reasonable time in which each deficiency is to be corrected. Gambling operations may not begin until ~~any~~ all deficiencies that prevent substantial compliance with laws or regulations and materially threatens public safety or the integrity of the gambling operation have been ~~addressed~~ corrected or mitigated.

9. Subsection (e) (not option specific) states that gambling operations may not be conducted at the new location until the required notifications and reviews have been completed.

a. **Keith A. Sharp, for HGC:** Mr. Sharp notes, subject to his general rejection of these regulations as unneeded, that "all the required approvals" is confusing and unnecessary, and requests clarification if this means all approvals related to the new location (including non-gaming approvals) before gambling operations can commence.

Response (a): These comments were accepted and the proposed action was modified as follows to accommodate them.

If Option 1 is adopted:

(e) No gambling operations may be conducted at any new location until ~~all the required approvals have been obtained and~~ the provisions of subsections (b) and, if applicable, (c) have been complied with.

If Option 2 is adopted:

(e) No gambling operations may be conducted at any new location until ~~all the required approvals have been obtained and~~ the provisions of subsections (b), (c), if applicable, and (d) have been complied with.

10. Subsection (g) provides for penalties for failing to notify the Commission and Bureau of a change in address even if not intending on immediately implementing gambling operations at the new location.

a. **Keith A. Sharp, for HGC:** Mr. Sharp notes that, subject to his general rejection of these regulations as unneeded, that the reference to notifying the Bureau of "any change pursuant to this section" is confusing and unnecessary. He further notes that this section may be redundant due to (e).

Response (a): These comments were accepted and the proposed action was modified as follows to accommodate them*:*

> (g) Failure to timely ~~notify~~ provide notice to the Bureau as required by subsection (b) ~~of any change pursuant to this section~~ shall constitute a ground for disciplinary action under Chapter 10 of this division.

11. The following additional comments were received about the general nature of the regulatory proposal, but not directly linked to any specific sections.

a. **Jeffrey Sinsheimer, for Bay 101:** Mr. Sinsheimer proposes that it is in the public's interest that the Bureau certifies that a proposed site for relocation conforms to state law. This would assist a licensee's decision making process about where to relocate and help licensees procure financing for construction of a gambling establishment that complies with all state and local laws. The following regulatory language was proposed:

> An owner-licensee may notify the Commission and the Bureau of its intent to relocate its gambling establishment at any time in advance of the intended relocation on the form entitled "Notice of Intent to Relocate," CGCC-_____ (New ____), which is attached in Appendix __ to this Chapter. Within 90 days of receipt of the form, the Commission and the Bureau shall determine whether the site proposed for relocation complies with all state law requirements and transmit that determination to the owner-licensee. If either the Commission or the Bureau finds that the site proposed for relocation does not comply with state law requirements it will release its findings of fact and law to the owner-licensee.

The Commission would be authorized to delegate this authority to the Executive Director in lieu of hearing each proposed site.

Response (a): This recommendation was rejected. It is neither the desire nor within the authority of the Commission to make a determination that a location meets all state requirements. It is within its authority to make determinations as they relate to gambling operations, which is expressed in the proposed regulations.

b. **Keith A. Sharp, for HGC:** Mr. Sharp suggests that this regulatory package represents "regulatory creep" and questions the necessity of these regulations and the wisdom of the state in inserting itself into a matter which is clearly and historically a matter of local regulation. The state should not be involved in local zoning decisions, or as an arbiter between local jurisdictions. These regulations do not further game integrity nor help ensure a licensee is free from criminal or unsavory associations. There is no regulatory reason to set in place potentially costly regulations that could

delay relocations and allow a neighboring jurisdiction to potentially hold a gambling establishment hostage in order to extract some economic or other advantage.

Response (b): This recommendation was rejected. Multiple provisions of the Gambling Control Act provide authority for the proposed regulatory requirements, including sections; 19801(l), 19824, 19841(p) and 19862. The intent of the regulations is to provide a means for a gambling establishment to operate without being restricted unnecessarily by providing a clear path of mediation in the event of an impasse.

The Commission has determined that these regulations would not have a significant adverse economic impact on businesses. This regulation changes the current process of a mandatory hearing and review before the Commission for all relocations to a simple process of notification to the Bureau, in most cases, and a review only if a neighboring jurisdiction files objections. Under the existing practice, there is no guarantee that the Commission will approve the new location, but under this proposal much of that uncertainty has been removed. Even when a review by the Commission is required, it would not differ significantly in terms of cost from the current process. It is anticipated that this review would be sought before the owner-licensee invested a significant amount of money in a new location.

There were no further comments, objections or recommendations received within the initial 45-day public comment period regarding the proposed action.

B. COMMENTS RECEIVED AT THE HEARING

The following written and oral comments/objections/recommendations were received regarding the text of the proposed action during the public comment portion of the regulation hearing held November 1, 2012:

ADOPT SECTION 12364. RELOCATION OF GAMBLING ESTABLISHMENT.

This proposed action would establish new Section 12364 within Article 7. Section 12364 would require cardrooms to notify the Bureau of any pending relocation of facilities, define what relocation is and provides requirements for relocation.

1. Subsection (b) requires an owner-licensee to notify the Bureau of a planned physical relocation of a gambling establishment at least 90 days in advance of the intended commencement of gambling operations, using a newly created form, CGCC-050 (New 06/12).

a. **James Parker, Bureau:** Mr. Parker presented a letter[2] that suggested revising this subsection to include the requirement that gambling establishments provide a floor plan with their notice to the Bureau. This floor plan would include, at a minimum,

[2] Letter from Martin J. Horan, IV, Assistant Bureau Chief, Bureau of Gambling Control, October 30, 2012.

the location of the main cage, the count room, the surveillance room, and the gaming area(s). The letter noted that the inclusion of such information earlier in the process would allow the Bureau to provide any concerns related to the location of these features before the conclusion of construction. Submitting the floor plan information early in the process would also allow the Bureau to address any issues without delaying the opening.

Mr. Parker expressed that it is the desire of the Bureau to proactively assist gambling establishments in resolving any issues with their cage and security within the noticed 90-day period before opening. The Bureau doesn't want to have to go in at the 11th hour and identify a problem or require reconstruction. Mr. Parker noted that an initial floor plan should have been provided to local government agencies well before the 90-day notice requirement, and therefore the submittal requirement would not create any additional burden. It was clarified that this draft floor plan would not have to include updates for changes, planned table locations or full architectural sets, including electrical, plumbing or other construction specific pages.

Mr. Parker supported the inclusion of this item in the regulation instead of as a Bureau policy, stating it would be beneficial to all parties and provide the gambling establishment with greater confidence that issues with the floor plan would be resolved early in the process.

b. **Keith A. Sharp, for HGC:** Mr. Sharp expressed concern that a requirement for the submittal of a floor plan may become burdensome as design revisions create different versions of the floor plan. After clarification by the Bureau that multiple versions would not be required and that only limited information would need to be included, Mr. Sharp expressed agreement with the Bureau's suggested revision.

Response (a and b): These comments were accepted and the proposed action was modified as follows to accommodate them:

> (b) An owner-licensee shall notify the Bureau of a planned relocation of a gambling establishment at least 90 days in advance of the intended commencement of gambling operations at the new location on the form entitled "Notice of Relocation," CGCC-050 (New 06/12), which is attached in Appendix A to this Chapter. A draft floor plan of the proposed gambling establishment depicting, at a minimum, the location of the main cage, the count room, the surveillance room, and the gaming area(s) shall accompany the notice to the Bureau.

2. Subsection (b), paragraph (1) requires the submittal of basic information from the owner-licensee, plus copies of business documents such as a rental or lease agreement, a fire safety and evacuation plan, a security and surveillance plan, local jurisdictional approvals and any other state or federal approvals that may be required.

a. **Keith A. Sharp, for HGC:** Mr. Sharp expressed concern that subparagraph (D) may not be possible to follow as many of the requested documents are not available even 30 days prior to the commencement of gambling operations, if such operations were to coincide with the opening of the location. Many of the items, such as occupancy permits, are often not available until the very last minute, including sometimes on the day of opening.

b. **James Parker, Bureau:** Mr. Parker was concerned that, because some of the listed approvals are not available until just before opening, the Bureau would be prevented from performing its site visit prior to opening. Mr. Parker suggested bifurcating the items listed in subparagraph (D) to allow for some to be submitted prior to opening instead of being required prior to a Bureau site visit. He suggested moving some items from subparagraph (D) into subparagraph (E) to accommodate this concern.

   Mr. Parker also indicated that in discussions with Commission staff, the Bureau had initially requested either a 45- or 30-day time frame to review documents prior to any site visit. Mr. Parker indicated that the Bureau would work with whatever time frame the Commission approved, but that more time was preferred.

c. **Jeffrey Sinsheimer, for Bay 101:** Mr. Sinsheimer expressed concern that the limitations in a gambling establishment's ability to control when approvals became available could make it hard for the Bureau to receive all of the required documents and still conduct a site visit prior to the commencement of gambling operations.

Response (a, b and c): These comments were accepted and the proposed action was modified as follows to accommodate them:

> (1) If the new location is more than 1,000 feet from any boundary line of its governing local jurisdiction, the owner-licensee shall~~, except as otherwise provided,~~ submit to the Bureau all of the following information and documents, of which the information and documents specified in subparagraphs (A) through (C)~~(D)~~, inclusive, are to be submitted no later than 30 days prior to ~~either the commencement of gambling operations or~~ the Bureau's site visit conducted pursuant to subsection (d)~~, whichever first occurs~~:
>
> …
>
> (D) Documentary evidence of the issuance to the licensee of all required approvals, licenses and permits by any applicable local jurisdictional entity concerning the new location; e.g., business licenses, occupancy permits, conditional use permits, zoning variances, local gaming licenses, etc. These documents, if available, shall be submitted at the same time as the documents specified in subparagraphs (A) through (C), inclusive, and if not available shall be submitted upon availability and prior to the commencement of gambling operations.

The proposed text revisions, while not following the methods included in the comments, alter the language in a manner that encompasses solutions to the expressed concerns.

3. Subsection (b), paragraph (2) addresses circumstances in which the new location of the gambling establishment will be within 1,000 feet of the boundary line of the local jurisdiction. The owner-licensee would be required to obtain the signature of the appropriate official in the appropriate agency or department in the neighboring jurisdiction confirming that the neighboring jurisdiction has no objections to the proposed location of the gambling establishment.

If the neighboring jurisdiction objects, the regulation requires the objection to be based upon evidence of probable negative effects resulting from the location of the gambling establishment or proof that the legitimate interests of the residents in the neighboring jurisdiction are threatened.

a. **Alan Titus, for Artichoke Joe's:** Mr. Titus expressed concern that a gambling establishment's influence may extend well beyond 1,000 feet, and therefore the Commission needs to establish a more conservative regulatory structure that allows for the Commission to be more involved in a change in location.

Response (a): This comment was rejected. As discussed in the Initial Statement of Reasons, the use of 1,000 feet follows what seems to be the typical distance used by local jurisdictions as a "buffer zone" from which businesses with potential secondary effects must be distanced from schools, churches, public libraries, public parks, hospitals, or other youth-oriented or sensitive locales. The regulation, as currently written, allows a neighboring jurisdiction to comment, not based on a gambling establishment's distance from one of these facilities, but of their boundary line. The regulations therefore provide the neighboring jurisdiction the ability to participate in this process even when the distance from a particular facility may be greater than 1,000 feet.

4. Subsection (d), provides that the Bureau will perform a site visit at the new location and notes what the Bureau should review and how any inconsistencies should be addressed. The proposal offered two options for public comment which differ in the extent of the Bureau's review, the time frame for the review, and in the potential actions for deficiencies.

a. **Keith A. Sharp, for HGC:** Mr. Sharp expressed concern that the language "in compliance with laws or regulations" included in paragraph (2) is "overreaching and sweeping."

Response (a): This comment was rejected. The limitation in the Bureau's authority, as proposed, is in its ability to prevent the commencement of gambling operations to just the most critical violations. It is for the welfare of all that the Bureau be able to inform a gambling establishment of even the most minor compliance issue so that in the long run the gambling establishment can operate within the laws and regulations that govern it.

b. **Alan Titus, for Artichoke Joe's:** Mr. Titus raised concerns that the Bureau's site visit usually focuses on either what the gambling establishment is doing wrong or on what criminal conduct is occurring at the gambling establishment and is not inspecting a location to ensure the adequacy of systems such as surveillance and security. Mr. Titus commented that the Bureau's staff doesn't have the background to look at a system and decide if it will be sufficient to allow a gambling establishment to operate, and therefore regulations shouldn't limit the Bureau to only inspecting prior to the commencement of gambling operations.

Response (b): This comment was rejected. As previously detailed, the Commission has the authority to propose regulations pertaining to the relocation of gambling establishments. Based on approved regulations, it is the responsibility of the Bureau to coordinate the implementation of these regulations, including the determination of what resources are appropriate.

c. **Keith A. Sharp, for HGC:** Mr. Sharp expressed concern that in previous conversations the Bureau has noted it has insufficient staffing to guarantee that the Bureau would be able to conduct its review prior to opening and that any delay in the Bureau's operations would cause a delay in the operations of the gambling establishment. Mr. Sharp also noted that he is not opposed to a requirement for the Bureau to conduct its site visit prior to the commencement of gambling operations and requested that the regulatory language be revised to ensure that the Bureau work within the timeline as initiated by the gambling establishment upon the submission of its 90-day notice to the Bureau.

d. **James Parker, Bureau:** Mr. Parker agreed that it was the Bureau's responsibility to conduct its review prior to the commencement of gambling operations to ensure that the proper systems are in operation prior to opening to ensure that the integrity of the game and public safety are protected. Mr. Parker pledged to work with the cardrooms prior to opening, in order to avoid any problems that might cause delays.

e. **Jeffrey Sinsheimer, for Bay 101:** Mr. Sinsheimer expressed concern that the Bureau would not come out sufficiently in advance of the indicated commencement date and would require repairs that would cause a delay in opening.

Response (c, d and e): These comments were accepted, in part, and staff's recommended Option 4 was modified as follows to accommodate them:

> (d)(1) The Bureau shall schedule and conduct a site visit prior to the intended commencement of gambling operations as indicated in subsection (b). ~~at the new location or within 30 days after the commencement of gambling operations.~~ A written report of the findings of the site visit shall be provided to the Commission, as well as any follow-up reports. The Bureau's site visit report shall include determinations regarding compliance with, at a minimum, the following internal control requirements of Article 3 of Chapter 7:

…

(2) If the Bureau notes any deficiency in compliance with laws or regulations, including but not limited to, a deficiency in the internal controls listed in paragraph (1), it shall issue a notice to the owner-licensee to correct the deficiency. The notice shall describe each deficiency and specify a reasonable time in which the deficiency is to be corrected. The commencement of gambling operations shall not be delayed ~~nor the operation suspended~~ unless the deficiency prevents substantial compliance with laws or regulations and materially threatens public safety or the integrity of the gambling operation, and the deficiency cannot be corrected or mitigated within a reasonable time. ~~Any action to suspend gambling operations under this section shall be taken pursuant to Business and Professions Code section 19931.~~ Failure to correct or otherwise mitigate the deficiency may be considered during the license renewal process and may result in disciplinary action under Chapter 10 of this division.

5. The following additional comments were received about the review process of the Bureau and the possibility that the review process may cause delays in the ability of the gambling establishment to open on its preferred date.

a. **Susanne George, Bureau:** Ms. George expressed concern that the proposed regulatory changes would not allow the Bureau to delay an opening in any manner but filing an emergency order. Ms. George inquired about pre-rulemaking discussions that regulatory language might be included to allow a licensee an opportunity to contest the Bureau's findings.

b. **Keith A. Sharp, for HGC:** Mr. Sharp requested clarification that the Commission would be the body to approve or disapprove the Bureau's notice that a material issue requires a delay in opening.

Response (a and b): These comments were rejected. A process has not been included in this regulatory proposal to allow for a gambling establishment to appeal to the Commission should they disagree with the Bureau's determination that gambling operations should be delayed. The gambling establishment would have whatever legal recourse it already possesses in any disagreement with the Bureau.

6. The following additional comments were received about the general nature of the regulatory proposal, but not directly linked to any specific sections.

a. **Alan Titus, for Artichoke Joe's:** Mr. Titus expressed concern that the proposed regulations are insufficient to cover the areas of oversight that the Gambling Control Act establishes for the Commission. Mr. Titus asserted that Business and Professions Code section 19801, in subdivisions (g), (h) and (k), provides clear direction that establishes the Commission's need to be involved in establishing guidelines for gambling establishment location.

Mr. Titus expressed concern that in the Initial Statement of Reasons, the reference to Business and Professions Code section 19801 subdivision (l) is broken into two parts, and that the word "however" has been removed. These changes incorrectly communicate the true meaning of this subdivision, as its use shows the Legislature's desire that the Commission be more involved in the approval of new locations.

Response (a): This comment was rejected. Mr. Titus' interpretation of this section and how it pertains to Commission authority has been taken out of context. Section 19801 states:

> "The Legislature hereby finds and declares all of the following:
>
> …
>
> (g) Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is…conducted in suitable locations.
>
> (h) Public trust and confidence can only be maintained by strict and comprehensive regulation of all…locations…
>
> …
>
> (k) In order to effectuate state policy as declared herein, it is necessary that gambling…activities take place only in suitable locations.
>
> (l) The location of lawful gambling premises…are proper subjects for regulation by local governmental bodies. However, consideration of those same subjects by a state regulatory agency, as specified in this chapter, is warranted <u>when local governmental regulation</u> respecting those subjects <u>is inadequate or the regulation fails to safeguard the legitimate interests of residents in other governmental jurisdictions.</u>" (Emphasis added)

Subdivisions (g), (h) and (k) show the intent of the Legislature to have comprehensive and meaningful regulation of the location of gambling establishments, but do not expressly or implicitly require prior Commission approval or specify to whom the responsibility is given. Subdivision (l), as noted in the Initial Statement of Reasons, assigns this regulatory authority primarily to the local jurisdiction but acknowledges the Commission's authority and responsibility to regulate only where local regulations are inadequate or do not protect the interests of a neighboring jurisdiction. The Commission has proposed paragraph (2) of subsection (b) of Section 12364 for the specific purpose of informing neighboring jurisdictions and giving them an opportunity to provide comments if they feel the primary jurisdiction's regulations are inadequate.

b. **<u>Keith A. Sharp, for HGC</u>:** Mr. Sharp renewed his concerns that this regulatory package represents "regulatory creep" but reflected that staff's response took good account of his initial written comments.

Response (b): The expression of support was accepted and considered in the adoption of the proposed action. In reference to the renewal of previous comments, those comments have been addressed in the 45-day written comments; Section A, No. 11 comment b.

c. **Jeffrey Sinsheimer, for Bay 101:** Mr. Sinsheimer stated that there has been a lot of positive change to the proposed language and appreciates staff's inclusion of clear options. Mr. Sinsheimer also stated that staff did a good job of balancing both the role of the State and that of local government. Mr. Sinsheimer repeated his desire that the regulations provide authority for the Commission to affirm that a proposed site meets "general" requirements. Mr. Sinsheimer desires this initial review to provide the gambling establishment with the opportunity to get the State's input on locations prior to any large investment.

Response (c): The expression of support was accepted and considered in the adoption of the proposed action. In reference to the renewal of previous comments, those comments have been addressed in the 45-day written comments, Section A, No. 11 comment a.

There were no further comments, objections or recommendations received regarding the proposed action during the public comment portion of the regulatory hearing.

C. 15-DAY CHANGE WRITTEN COMMENT PERIOD

The following written comments/objections/recommendations were received regarding the modified text of the proposed action during the 15-day written comment period that commenced November 14, 2012 and ended November 29, 2012:

ADOPT SECTION 12364. RELOCATION OF GAMBLING ESTABLISHMENT.

This proposed action would establish new Section 12364 within Article 7. Section 12364 would require cardrooms to notify the Bureau of any pending relocation of facilities, define what relocation is and provides requirements for relocation.

1. Subsection (a), paragraph (2) would define a "physical relocation" to be the relocation of a gambling establishment from one site to another site but not an addition to the original site or a move within a site.

a. **Mark Kelegian, Oceans 11 Casino:** Mr. Kelegian expressed concern that the inclusion of "all buildings and parking lots" would mean that a gambling establishment may be required to seek approval from a neighboring jurisdiction for the off-site move of a parking lot or other non-gambling facilities even when the actual location of the gambling is not moving. Mr. Kelegian suggests that in situations where the physical location of gambling is not being relocated, but other facilities might be, no notification to a neighboring jurisdiction or even the Bureau should be required.

Response (a): This comment was rejected. The exemption allowed by subparagraph (C) of paragraph (2) of subsection (b) provides that gambling establishments that may be adding non-contiguous parcels, even for non-gambling purposes, may not be subject to the notification requirement. If the gambling establishment is sufficiently close to the boundary line that such a move would not allow for this exemption, then the notification should be required as there may be sufficient impact to the neighboring jurisdiction that an objection may be warranted.

In addition, when not required to communicate with a neighboring jurisdiction, notification to the Bureau should still be required. Despite the actual gambling facilities remaining unchanged, a change in other facilities may still require a review of the security and surveillance plan, the fire safety and evacuation plan and other documents as required in paragraph (1) of subsection (b). In the event that none of these documents are being revised in a manner requiring extensive review, the Bureau's review will be minimal and no delay to relocation should be required.

2. Subsection (b), paragraph (2), subparagraph (B) provides guidelines for the minimum information that must be provided to a neighboring jurisdiction, notifying them of their ability to provide objection to a proposed new location for the gambling establishment and the timeframe under which such objections must be provided.

a. **Alan Titus, for Artichoke Joe's:** Mr. Titus expressed concern that the grounds under which a neighboring jurisdiction has to submit its objections are vague and inconsistent. In addition, despite reflecting the language of Business and Professions Code section 19801, the use of "residents" does not provide sufficient protections to other groups whose legitimate interests might be threatened, such as; "businesses, shoppers, schools, school-children, places of worship, worshipers."

Response (a): These comments were rejected. These comments are not germane to the modification of the language of the proposed action and no response is required. While there were changes made to the original paragraph containing the specific language that is the subject of this comment, no changes were made to the subject language itself or to the context in which it is used.

However, the term "residents," within the overall context of Section 19801 and this regulation, would appropriately and logically include all of the individuals and entities mentioned in the comment.

3. Subsection (b), paragraph (2), subparagraph (C) provides an exception to the requirements of subparagraphs (A) and (B) for gambling establishments already within 1,000 feet of the boundary line of the local jurisdiction.

a. **Alan Titus, for Artichoke Joe's:** Mr. Titus expressed concern that this subparagraph would exempt any gambling establishment already within 1,000 feet of the boundary line. Mr. Titus noted that this exemption seems to be based on the assumption that any new location would not generate a different impact on the

neighboring jurisdiction than the current location. Mr. Titus disagrees with this basis, as any new location could be on a street that transverses both jurisdictions and could result in impacts on sensitive parts of the neighboring jurisdiction.

Response (a): This comment was rejected. This subparagraph does not provide a blanket exemption for all gambling establishments already within 1,000 feet, but instead provides an ever decreasing exemption the closer the gambling establishment's original location is to the boundary line. Even if a gambling establishment wishes to increase the distance (but is still within 1,000 feet) from the boundary line, it is limited on what parallel movement is exempt.

4. Subsection (c), paragraph (1) specifies that if the owner-licensee is unable to provide consent documentation in subparagraph (A), paragraph (2) of subsection (b) and the Bureau receives objections from a neighboring jurisdiction pursuant to subparagraph (B), paragraph (2) of subsection (b), the Bureau shall submit the relocation notice to the Commission for consideration at a public meeting.

a. **Alan Titus, for Artichoke Joe's:** Mr. Titus has expressed concern that the proposed language is unclear and offers no guidance on how the Commission will make its determination on the suitability of the new location.

Mr. Titus also expressed concern with the direction that this section has gone during the public comment period. The original proposed regulations required that if a neighboring jurisdiction did not assert approval to the new location, the Commission would hold a meeting to determine the permissibility of the new location, while the revised version requires the neighboring jurisdiction to assert an objection in order for a hearing to be conducted.

Response (a): This comment was rejected. It is not the intent of this regulatory action to provide a specific, limiting description on the suitability of proposed or current gambling establishment locations. Every situation will be different and it is neither possible nor advisable to establish specific criteria that might work to limit the Commission's discretion in making a determination. The desire is to leave the primary decision making to the local governmental authorities and to only have the Commission intervene in the event that a neighboring jurisdiction has raised concerns. To address this, the Commission will hold a publicly noticed meeting where the gambling establishment, neighboring jurisdiction and any other member of the public will be allowed to provide public comment when objections have been raised. The Commission will base its decision on the information provided in the neighboring jurisdiction's objections along with any other information provided on a case-by-case basis.

The current practice for relocation is for every proposed location to be approved by the Commission on a case-by-case basis. The revised regulations are intended to only require an approval hearing when specific objections are raised. The original version of the regulations required a gambling establishment to obtain consent from neighboring jurisdictions. In comments received during the 45-day comment period, multiple

comments noted that even if the neighboring jurisdiction approved the new location there was no benefit to the jurisdiction in asserting such, and therefore no impetus to provide the approval. In addition, the inaction of a neighboring jurisdiction could unnecessarily delay completion of the relocation even when there are no concerns or grounds for objection. Such a delay could have a negative financial cost to the licensee. Those comments were accepted and the regulations revised to only require action by the neighboring jurisdiction in the event that the jurisdiction doesn't approve, but to still allow for them to assert approval.

5. Subsection (c), paragraph (2) specifies that the Commission will not review the suitability of a new location when within 1,000 feet of a neighboring jurisdiction if that neighboring jurisdiction does not submit an objection to the new location.

a. **Mark Kelegian, Oceans 11 Casino:** Mr. Kelegian noted that it was potentially unclear whether the Commission or Bureau has the ability to object to a proposed location in the event it was within 1,000 feet of a neighboring jurisdiction and that jurisdiction does not issue any objections. Mr. Kelegian requested that the language be clarified to explicitly bar the Commission or Bureau from independently issuing an objection.

Response (a): This comment was rejected. In most cases, paragraph (2) of subsection (c) would be sufficient, as it already specifies that if no objections are received from a neighboring jurisdiction the requirement to receive approval is waived. Paragraph (1) of subsection (c) only prevents the relocation from occurring without Commission review should objections be received.

It is possible that due to a previously unconsidered situation where a location is clearly inappropriate and neither jurisdiction objects, the Commission may still wish to intervene. Therefore additional limitation is not appropriate. Business and Professions Code section 19801 subdivision (l) does still allow the Commission to intervene "when local governmental regulation…is inadequate or the regulation fails to safeguard the legitimate interests of residents in other governmental jurisdictions," and such a determination should be allowed to be made even if the neighboring jurisdiction does not object.

6. Subsection (g) provides that failure to notify the Bureau of a change in location is a ground for disciplinary action.

a. **Mark Kelegian, Oceans 11 Casino:** Mr. Kelegian suggested a revision to the language of subsection (g) as follows:

> (g) Failure to timely provide notice to the Bureau as required by subsection (b) ~~shall constitute a ground for~~ the owner-licensee shall be subject to disciplinary action under Chapter 10 of this division.

Mr. Kelegian notes that this change would make the language more consistent with the language of subsection (f) and would allow for "legitimate or justifiable reasons that have not been considered [as to] why the owner-licensee did not provide notice."

Response (a): This comment was rejected. Despite the differing language of subsections (f) and (g), the meaning is the same. Both subsections (f) and (g) simply say that disciplinary action may be taken against a licensee for their respective violations. In either case, there is nothing to prevent the consideration of "legitimate or justifiable reasons" for non-compliance in determining whether to pursue disciplinary action. Furthermore, "legitimate or justifiable reasons" for non-compliance might even be proper subjects to be considered as extenuating or mitigating circumstances should disciplinary action be pursued.

7. The following additional comments were received about the general nature of the regulatory proposal, but not directly linked to any specific sections.

a. **Jeffrey Sinsheimer, for Bay 101:** Mr. Sinsheimer stated that he supports the modifications to the proposed regulations.

Response (a): The expression of support was accepted and considered in the adoption.

b. **Alan Titus, for Artichoke Joe's:** Mr. Titus continued his objections that the proposed regulatory package is not sufficient to provide the "comprehensive control" required of the Commission under the Gambling Control Act. Mr. Titus believes the Commission should use its regulatory authority to provide "uniform minimum standards" and that local jurisdictions' authority would then be to "[impose] more stringent local controls." Mr. Titus states that the proposed requirements provide "no state requirements whatsoever" and that this "represents a missed opportunity to enact and exercise the types of controls required by the Act."

Response (b): This comment was rejected. It is not the intent of this regulatory proposal to provide a set of guidelines detailing the specifics of a suitable location for a gambling establishment. This proposal is intended to provide guidance specific to the relocation of a gambling establishment. Any "uniform minimum standards" would have a broader affect than just relocation, including the location of new and possibly existing gambling establishments. It is not the intent to provide such guidelines at this time.

This would also be contrary to the expressed provision of the Act which places this responsibility primarily with local jurisdictions. The Commission does not want to usurp the authority of the local jurisdiction or substitute its judgment for that of the agencies in the best position to make these determinations. Absent a determination that local regulation and oversight is inadequate or does not consider the interests of neighboring jurisdictions, there is no necessity for the state to intervene.

c. **Alan Titus, for Artichoke Joe's:** Mr. Titus expressed concern that local jurisdictions were not provided the opportunity to provide comments on this regulatory package.

Response (c): This comment was rejected. The Commission has followed the appropriate requirements for the approval of the proposed regulatory changes. The Commission held a workshop on September 28, 2011 and initiated the formal Administrative Procedure Act rulemaking process on May 5, 2012 at a publically noticed Commission hearing. The Notice of Proposed Action was filed with the OAL on August 7, 2012, and was published in the *California Regulatory Notice Register* on August 17, 2012. An additional Commission hearing was conducted on November 1, 2012. In addition, the Commission has properly noticed the regulations for the 45-day comment period and a 15-day change comment period. All of these actions allowed ample time and opportunity for any interested local jurisdiction to participate and comment on the proposed regulations.

There were no further comments, objections or recommendations received regarding the proposed action during the 15-day change comment period.

There were no further comments, objections or recommendations received regarding the proposed action within any of the public comment periods, and no comments were received outside of the public comment periods.