

NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
LONG BEACH HONDA, ) Protest No. PR-1835-02  
Protestant, )  
v. )  
AMERICAN HONDA MOTOR COMPANY, )  
Respondent. )

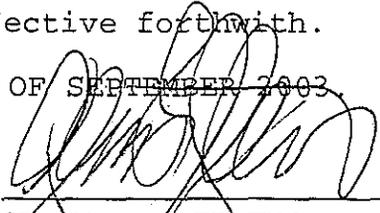
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DECISION

At its regularly scheduled meeting of September 18, 2003, the Public members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 18<sup>th</sup> DAY OF ~~SEPTEMBER 2003~~

  
\_\_\_\_\_  
GLENN E. STEVENS  
President  
New Motor Vehicle Board

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8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD  
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11 In the Matter of the Protest of )  
12 LONG BEACH HONDA, ) **Protest No. PR-1835-02**  
13 )  
14 Protestant, )  
15 v. ) **PROPOSED DECISION**  
16 AMERICAN HONDA MOTOR COMPANY, )  
17 Respondent. )  
18

19 PROCEDURAL BACKGROUND

20 1. By letter dated November 4, 2002, Respondent American Honda  
21 Motor Company, Inc. ("Honda" or "Respondent") notified Protestant Long  
22 Beach Honda ("Protestant") of its intention to relocate Harbor City  
23 Honda from its current location at 1450 West Pacific Coast Highway in  
24 Wilmington to the proposed relocation site at 1435 East 223rd Street in  
25 Carson, California, which is within ten miles of Protestant.

26 2. Respondent also notified Norm Reeves, Inc., d.b.a. Norm Reeves  
27 Honda Superstore ("Norm Reeves Honda"), LLL Sales Co. LLC, d.b.a.  
28 Gardena Honda ("Gardena Honda"), and Scott Robinson Pontiac, Inc.,

1 d.b.a. Scott Robinson Honda ("Scott Robinson Honda"), of its intention  
2 to relocate Harbor City Honda to Carson, California.

3 3. Long Beach Honda (PR-1835-02), Norm Reeves Honda (PR-1836-02),  
4 Gardena Honda (PR-1837-02) and Scott Robinson Honda (PR-1838-02)  
5 protested the proposed relocation on or about November 21, 2002. The  
6 protests were filed pursuant to California Vehicle Code section 3062<sup>1</sup>  
7 and sought an order prohibiting the proposed relocation of Harbor City  
8 Honda.

9 4. The protests were consolidated by stipulation of the parties  
10 and Board Order on December 13, 2002.

11 5. Protestants Norm Reeves Honda, Gardena Honda, and Scott  
12 Robinson Honda each settled and dismissed their protests prior to the  
13 hearing, leaving Long Beach Honda as the sole Protestant.

14 6. Honda is a distributor of new motor vehicles and is licensed  
15 by the California Department of Motor Vehicles. Protestant is a  
16 licensed new motor vehicle dealer and a Honda franchisee doing business  
17 at 1500 East Spring Street, Signal Hill, California.

18 7. A hearing on the merits of the Protest was held on May 5-7 and  
19 May 12-16, 2003, before the Honorable J. Keith McKeag, Administrative  
20 Law Judge. Michael J. Flanagan of the Law Offices of Michael J.  
21 Flanagan, 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California,  
22 appeared for Protestant, and Wallace M. Allan and Eric Y. Kizirian of  
23 O'Melveny & Myers LLP, 400 South Hope Street, Los Angeles, California,  
24 appeared on behalf of Respondent.

25 8. Long Beach Honda presented the testimony of three witnesses:  
26 Daniel Niedringhaus, dealer principle of Protestant; Dr. Earnest Manuel,

27 \_\_\_\_\_  
28 1/ All statutory references are to the California Vehicle Code, unless  
noted otherwise.

1 with the Fontana Group ("Fontana"), an automobile industry consulting  
2 firm; and Michael J. Lynch, Zone Manager for the Western Zone of  
3 American Honda, as an adverse witness.

4 9. Honda presented the testimony of four witnesses: William R.  
5 Green, Manager of Marketing Planning for American Honda; Craig Boyajian,  
6 Divisional Vice President for Sonic Automotive in the Western Division;  
7 James Anderson with Urban Science Applications, Inc. ("Urban Science"),  
8 an automobile consulting firm; and Stuart H. Harden, C.P.A., with  
9 Hemming Morse Inc.

10 10. Following the hearing, a briefing schedule was set, post-  
11 hearing briefs were filed and the matter was submitted for decision on  
12 August 4, 2003.

13 ISSUES PRESENTED

14 11. Under section 3062(a)(1), a franchisor is not permitted to  
15 relocate an existing motor vehicle dealership, where a timely protest  
16 has been filed, until there has been a finding of whether or not good  
17 cause exists for precluding the relocation. Under section 3066(b), the  
18 franchisee has the burden of proof to establish that there is good cause  
19 not to enter into a franchise relocating a motor vehicle dealership.

20 12. In determining whether there is good cause for the relocation  
21 of an existing franchise, Section 3063 requires the Board to consider  
22 the existing circumstances, including but not limited to:

- 23 (a) Permanency of investment.
- 24 (b) Effect on the retail motor vehicle business and the consuming  
25 public in the relevant market area.
- 26 (c) Whether it is injurious to the public welfare for an  
27 additional franchise to be established.
- 28 (d) Whether the franchisees of the same line-make in that relevant

1 market area are providing adequate competition and convenient  
2 consumer care for the motor vehicles of the line-make in the  
3 market area which shall include adequacy of motor vehicle  
4 sales and service facilities, equipment, supply of vehicle  
5 parts, and qualified service personnel.

6 (e) Whether the establishment of an additional franchise would  
7 increase competition and therefore be in the public interest.

8 **FINDINGS OF FACT**

9 **General Findings**

10 13. Protestant, Harbor City Honda, and each of the other dealers  
11 involved in the consolidated protests, are located within the statutory  
12 ten-mile radius around the proposed relocation site which comprises the  
13 Carson Relevant Market Area ("RMA")<sup>2</sup>. Each dealer is assigned a Primary  
14 Market Area ("PMA") which consists of the geographic area closest to  
15 each dealer, but since the dealers are located in the Los Angeles  
16 metropolitan market they are expected to compete throughout the entire  
17 metropolitan market against the dealers for both Honda and other lines.  
18 One of the dealers in the Carson RMA, Norm Reeves Honda, is the largest  
19 volume Honda dealer in the United States. The Norm Reeves Honda PMA  
20 adjoins Protestant's PMA to the north-east. Harbor City Honda's PMA  
21 adjoins Protestant's PMA to the west, both before and after the proposed  
22 relocation. The relocation PMA will be referred to as the "Carson PMA."

23 14. There are four major automobile shopping areas in the Carson  
24 RMA, which are located in Cerritos (where Norm Reeves Honda is located),  
25 Torrance (where Scott Robinson Honda is located), Signal Hill (where  
26 Protestant's dealership is located) and Carson (where Honda proposes to

27 \_\_\_\_\_  
28 2/ Section 507 defines relevant market area as "any area within a  
radius of 10 miles from the site of a potential new dealership."

1 relocate Harbor City Honda). Honda's primary competitors, Toyota and  
2 Nissan, each have more dealerships than Honda in the Carson RMA (Toyota  
3 7, Nissan 6, and Honda 5).

4 15. Harbor City is the only remaining new car dealership in a  
5 former "auto row," in a deteriorating area of Wilmington. Several  
6 manufacturers such as Volkswagen, Porsche, Nissan, Chevrolet,  
7 Oldsmobile, and Ford, which once had dealerships in the area, have  
8 closed or relocated their dealerships. The area is riddled with  
9 graffiti and gang activity, all of which have contributed to decreased  
10 traffic and business at Harbor City Honda.

11 16. The proposed relocation is to an approximately 4-acre site in  
12 Carson, California which adjoins the 405 freeway. The site is 4.3 miles  
13 from Protestant.

14 17. Protestant is a highly profitable dealership. In 2002 alone,  
15 Protestant's earnings were \$2,598,904. Based on Protestant's net-to-  
16 sales ratio, a standard Honda uses to compare the profitability of its  
17 dealerships, Protestant is the most profitable Honda dealership in  
18 California. Protestant does not contend that its viability is  
19 threatened by the proposed relocation, and Protestant's own expert  
20 conceded that there is no such threat.

21 Findings Relating to Permanency of Investment  
22 [Veh. Code § 3063(a)]

23 18. Daniel Niedringhaus has been the president of Long Beach  
24 Motors for approximately 20 years. He has been involved in the  
25 automotive sales and service industry for a little over 30 years. Long  
26 Beach Honda has spent 20 years representing Honda in the local  
27 community.

28 19. Daniel Niedringhaus first joined Long Beach Honda in 1983.

1 Long Beach Honda has been in existence since 1963 and employed 76  
2 employees at year's end. Currently, Protestant has 88 employees.  
3 Personnel expenses at the dealership equaled \$3,259,000 in 2002. The  
4 present facility of Protestant was built in 1995, and is "state of the  
5 art."

6 20. In 1984, Mr. Niedringhaus purchased a 50% interest in Long  
7 Beach Honda. Mr. Niedringhaus currently owns 100% of Long Beach Honda,  
8 a level of ownership he reached in 1987.

9 21. In 1995, Long Beach Honda relocated to its present facility.  
10 The previous location was situated on 1.1 acres with 20,000 square feet  
11 of buildings. There were three separate off-site storage locations for  
12 used cars, a reconditioning center and similar activities. At the time  
13 of its relocation, both Protestant and Honda agreed that it would be  
14 best to consolidate operations into one new location.

15 22. The current dealership has 5.5 acres at its main location.  
16 The principal facility of Long Beach Honda is located at 1500 East  
17 Spring Street, Signal Hill, California, while 3250 Long Beach Boulevard  
18 was the dealership's prior facility. The previous facility is currently  
19 used for surplus inventory, light reconditioning, and storage of service  
20 and body shop parts.

21 23. The size of the current showroom of Long Beach Honda is 7,934  
22 square feet. The minimum Honda requirement for showroom size is 5,665  
23 square feet. For the administration area, square footage at the  
24 dealership is 2,066 square feet, also above guide. The required number  
25 of service stalls, is 18 while the dealership has 21. The requirement  
26 for lifts is 11 and the dealership has 22. The required square footage  
27 is 11,366 and the actual is 21,065. For parts storage, the requirement  
28 is 7,753 square feet and the actual is 22,050.

1        24. The financial statements for Long Beach Honda establish that  
2 Protestant has a substantial, permanent investment in its dealership  
3 operations. Long Beach Honda has current assets of \$6,475,802, with a  
4 net working capital of \$4,016,410. Liabilities are listed at  
5 \$3,642,159. The net working capital required by Honda is \$1,548,900.  
6 Protestant plans to increase its net working capital in the near future.

7        25. Protestant also has a significant, long-term lease for the  
8 real property on which the dealership is located. Long Beach Honda has  
9 a 30-year lease with a monthly rent of \$75,000 per month. The rent is  
10 based on the minimum value of the real estate with a 10% return. The  
11 minimum value of the real estate was determined by a proposal received  
12 from Capital Automotive REIT in 2001. Capital Automotive REIT is a  
13 publicly-traded company and is listed on the New York Stock Exchange.  
14 As of 1999, the dealership had a flooring line of \$6 million, an amount  
15 that remains approximately the same today.

16        26. The value of the Long Beach Honda real property, which was  
17 used to calculate a fair market rental was derived from an offer made by  
18 Capital Automotive REIT in a letter dated November 1, 2001, to purchase  
19 the Long Beach Honda dealership property for \$9 million. The offer was  
20 rejected. To establish a current monthly rent for the dealership  
21 property, a rate of return of 10% based on the \$9 million offer was  
22 established, which equaled \$75,000 per month. The normal rate of return  
23 for real property of this type is anywhere between 10% and 12%.

24        27. Mr. Niedringhaus has approximately \$5 million invested in Long  
25 Beach Honda. He spent approximately \$2 million for the land and about  
26 \$2 to \$2.3 million to construct the buildings. He has \$800,000 invested  
27 in furniture, fixtures, equipment, and related items.

28        28. As with any automobile dealership, most of Protestant's assets

1 are represented by its vehicle and parts inventory, and its goal is to  
2 sell as much of that inventory as possible each year. While those  
3 assets, as an accounting matter, are therefore considered to be  
4 "current" or "liquid" and not "permanent", there is no question that a  
5 significant permanent investment has been made in the dealership, and  
6 that there is no indication that the dealership will cease to do  
7 business into the foreseeable future.

8 29. If Harbor City Honda is relocated it will be renamed Carson  
9 Honda. It will be constructed on an approximately 4-acre parcel in  
10 Carson, a site that is both visible and accessible from the 405 freeway.  
11 The relocation site is approximately 4.3 miles from Protestant. The  
12 Carson Honda dealership will occupy an attractive, modern, and state-of-  
13 the-art facility. Sonic Automotive, Inc. ("Sonic"), which owns Harbor  
14 City Honda, has executed a purchase agreement to acquire the 4-acre  
15 parcel from the redevelopment agency of the City of Carson for  
16 approximately \$2,124,000. A closing condition in this purchase  
17 agreement is that Harbor City Honda obtain the right to relocate to the  
18 proposed site in Carson. Sonic plans to develop the 4-acre parcel and  
19 construct a ground-up Honda "Image" facility that exceeds Honda's space  
20 and facility guidelines.

21 30. In addition to the 4-acre parcel on which the proposed Carson  
22 Honda facility will be constructed, Sonic has executed an agreement to  
23 sublease from the City of Carson an approximately 3.3 acre portion of a  
24 10-acre parcel located very close to the proposed Carson Honda location.  
25 The sublease contains a provision that makes it subject to Sonic's  
26 acquisition of the 4-acre parcel. The 3.3-acre parcel will be used  
27 exclusively as a storage lot for new car inventory.

28 31. The total costs for the proposed Carson Honda facility to be

1 constructed on the 4-acre parcel, which includes the costs for land  
2 acquisition (\$2,124,000), facility construction (\$4,912,000), and  
3 related development fees and costs (approximately \$826,620), is  
4 approximately \$7,862,620.

5 Findings Relating to the Effect of Relocating an  
6 Existing Dealership on the Retail Motor Vehicle  
7 Business and the Consuming Public  
8 [Veh. Code § 3063(b)]

9 32. Honda performed a market study in 1996 which determined that  
10 relocation of the Harbor City point was not justified. By 2000 and  
11 2001, when new market studies were performed by Honda, in response to  
12 requests by the dealer that relocation be approved, the decision was  
13 changed to one approving relocation. The Zone Manager had disagreed  
14 with the 1996 decision, based on his experience in the Los Angeles  
15 market while with Honda and previously with a competitor. He had made  
16 the disagreement known at the time of the 1996 study, and when the later  
17 studies were performed he urged approval of relocation. There is  
18 nothing sinister in this situation, and there has been no showing that  
19 he acted in any manner which improperly affected the later studies or  
20 resulted in the conclusions having been reached in bad faith.

21 33. Since the proposed relocation site is closer to Protestant  
22 than the existing site, there is no question that there will be an  
23 increase in competition between the two dealers, and if Protestant does  
24 not act to increase its penetration of the market, it will lose sales  
25 and its profit level will decrease. The paradox in this case, however,  
26 is that Protestant is such a profitable dealer that its expert witness  
27 admitted that the sales lost to the relocated dealer will not cause  
28 Protestant to become unprofitable. The Legislature obviously considers  
increased competition to be a good thing, since section 3063(e) asks the

1 Board to determine whether the relocation of the existing franchise  
2 "would increase competition and therefore be in the public interest."

3 34. Honda asserts that there is no reason that Protestant cannot  
4 increase its penetration rate and maintain or even increase its sales  
5 and profits. It bases that assertion on comparisons to other markets,  
6 and the demographic features of the subject market which evidence an  
7 opportunity for increased sales in that market.

8 35. To evaluate the adequacy of representation in the Carson RMA  
9 and the Carson PMA, and for the additional purpose of quantifying the  
10 amount of opportunity available in the Carson RMA, it is necessary to  
11 develop a reasonable penetration standard upon which the performance of  
12 the dealer network can be judged. Such a standard for the Carson RMA is  
13 most appropriately based on the actual penetration of Honda in a  
14 comparable geographic area after adjusting for any difference between  
15 the Carson RMA and the comparison area. The two most important  
16 characteristics to consider in selecting a comparison area are that (1)  
17 the comparison area itself be adequately represented, and (2) the  
18 comparison area be independent of the area under study.

19 36. In selecting an appropriate penetration standard, Honda's  
20 market expert, Mr. James Anderson, considered three potential comparison  
21 areas - Orange County as a local area, California as an intermediate  
22 area, and the United States as a large area. Orange County is  
23 geographically closest and similar to the Carson RMA. Indeed, the  
24 Carson RMA is adjacent to Orange County.

25 37. Use of the national penetration figures to analyze the  
26 performance of the dealer network in the Carson RMA was determined by  
27 Mr. Anderson to be inappropriate because Honda is under-represented in  
28 the nation as compared to California and Orange County. Nationwide,

1 approximately 3.2% of all new vehicle franchises are Honda franchises,  
2 whereas in California and Orange County, Honda's shares are 5.2% and  
3 6.5% respectively. This was a reasonable determination.

4 38. Some automobile markets are different from other markets in  
5 that consumers in a local market may prefer vehicles of a different  
6 size, price, or type than consumers in the comparison area. To the  
7 extent demographic differences exist that impact new vehicle purchase  
8 behavior between markets, these differences are expressed in the types  
9 of vehicles consumers purchase. To determine a reasonable standard to  
10 measure the performance of a particular brand's dealer network in a  
11 given market, it is appropriate to analyze that market by product group  
12 or segment. The car industry is appropriately divided into commonly  
13 accepted groups or segments of cars. The segmentation analysis  
14 calculates the relative popularity of each segment in the local market,  
15 such as the Carson RMA or the Carson PMA, and then adjusts the overall  
16 expected penetration for the local market to reflect the unique consumer  
17 preferences present in the local market.

18 39. Any variance between comparison area penetration and study  
19 area penetration can be explained by one or more of three factors -  
20 unique characteristics of consumers in the area, the number and location  
21 of dealers in the dealer network, and dealer operations. Segmentation  
22 analysis is the best way to isolate and adjust for unique consumer  
23 preferences because it is based on actual consumer behavior.

24 40. If compared against either the California or Orange County  
25 adjusted penetration rate, the penetration rates in Protestant's PMA,  
26 the Carson RMA as a whole, and in the relocated dealer's PMA are below  
27 average.

28 41. The penetration rate in Protestant's PMA is also below the

1 average penetration rate for the PMAs which comprise the Los Angeles  
2 market.

3 42. The use of the adjusted penetration rates of California and  
4 Orange County for comparison purposes is reasonable, because of their  
5 proximity, similarity, and the fact that significant portions of the Los  
6 Angeles market do achieve those expected levels.

7 43. While penetration rates are based on registration figures, not  
8 actual sales by the dealer assigned the PMA, the effect of geographic  
9 proximity is of such importance to sales effectiveness that the  
10 penetration rate within a PMA is generally used in the industry to grade  
11 the assigned dealer's performance. The result of below-average  
12 penetration is lost sales to inter-brand competitors, and the loss of  
13 sales and profits which the dealer would be expected to make if it only  
14 did as well as the average dealer.

15 44. Loss of sales due to intra-brand competition is the other  
16 component of lost opportunity which can affect a dealer. This occurs  
17 when Honda dealers outside the market sell into the market. While some  
18 in-sell is always to be expected, it does provide an opportunity for a  
19 dealer in the market to increase its sales, since the dealer has the  
20 benefit of proximity to the buyers who are going outside the market to  
21 purchase their cars.

22 45. In 2002, the Carson RMA lost over 1,750 sales to inter-brand  
23 competition, by having a penetration rate less than neighboring Orange  
24 County, and lost over 2,500 sales to intra-brand competition from Honda  
25 dealers outside the Carson RMA. This means that over 4,250 potential  
26 sales were available to the Honda dealers within the Carson RMA.

27 46. If the relocated Harbor City Honda dealership achieves sales  
28 effectiveness equal to the average sales effectiveness for all other

1 Honda dealers in the Carson RMA, its incremental sales (projected sales  
2 in addition to the 480 units Harbor City Honda sold within the Carson  
3 RMA from its current location) would be 654 units in the Carson RMA.  
4 Since the total available Honda opportunity in the Carson RMA for  
5 existing Honda dealers is over 4,250 sales, there would still be ample  
6 available opportunity for other dealers to increase sales, especially  
7 around their dealership. That is, the Honda registrations in the Carson  
8 RMA sold by the relocated Harbor City Honda in Carson would constitute  
9 only 14.9% of the total available opportunity in the Carson RMA under  
10 the Orange County standard. Thus, there will still be sufficient  
11 unrealized opportunity for Protestant to maintain or even increase its  
12 Honda sales after the proposed relocation if Protestant responds  
13 positively and competes for that business.

14 47. The impact analysis set forth in paragraph 46 reaches similar  
15 results when analyzed using the more conservative California standard  
16 penetration as the benchmark for expected market penetration instead of  
17 Orange County. Utilizing the same methodology, the projected Honda  
18 sales of the relocated Harbor City Honda would constitute only 16.8% of  
19 the 3,908 total available opportunity in the Carson RMA under the  
20 California standard if Harbor City Honda performs like the average  
21 Carson RMA dealer after relocation.

22 48. The demographic characteristics of the Carson RMA,  
23 Protestant's PMA, and the Carson PMA, show that increased sales should  
24 be forthcoming. Population and households in each area have grown  
25 significantly between 1990 and 2002, and are projected to experience  
26 continued growth through 2007. Protestant's PMA had a population of  
27 over 430,000 in 2001 and is projected to have a population of over  
28 460,000 by 2007. The entire Carson RMA has a population of over 2

1 million at both points in time.

2 49. Median household income in the Carson RMA is favorable to  
3 Honda, exceeding \$75,000 in many census tracts. Moreover, the great  
4 majority of the census tracts in the Carson RMA have incomes in excess  
5 of \$25,000, which is the threshold income of Honda buyers. This further  
6 confirms that there is a high opportunity for car sales in the Carson  
7 RMA.

8 50. Growth in employment in Los Angeles County has been steady and  
9 substantial, increasing from 3,957,037 in 1994, to 4,570,738 in 2002.  
10 Such growth in employment is a good indicator that opportunity for  
11 increased Honda sales and registrations is strong and will continue to  
12 grow in the future.

13 51. The number of total retail competitive passenger vehicle  
14 registrations in the Carson RMA has grown from 33,692 in 1994, to 49,145  
15 in 2002. Registration growth in the Carson PMA (5,669 in 1994, to 8,341  
16 in 2002) and Signal Hill PMA (6,622 in 1994, to 9,471 in 2002) was  
17 equally impressive. Recognizing that households and population grow at  
18 about one percent per year, this is very dramatic growth and indeed, a  
19 very healthy sign for the sale of new automobiles.

20 52. Within the Carson RMA, annual growth in total population,  
21 driving age population, household growth, employment, and retail car  
22 registrations all are highly favorable and support the relocation of  
23 Harbor City Honda to Carson.

24 53. Protestant relocated to its present location in 1995. Since  
25 that time it has increased its penetration rate in its PMA and has seen  
26 a decline in the in-sell registrations in its PMA.

27 54. Mr. Niedringhaus testified that Long Beach Honda experienced a  
28 significant increase in business following its relocation.

1 Specifically, Mr. Niedringhaus agreed that from 1995 to 2002, Long Beach  
2 Honda's new car sales have increased by 59%, used car sales by 66%, and  
3 parts and service business by 71%. Mr. Niedringhaus believes that his  
4 increased sales and business following his own relocation did not come  
5 at the expense of surrounding Honda dealers and was "new business."

6 55. The proposed relocation site offers Harbor City Honda many  
7 advantages not present in its current location, including increased  
8 daily traffic. Harbor City Honda's current location on Pacific Coast  
9 Highway has a traffic count of approximately 50,000 vehicles per day.  
10 Although Harbor City Honda is currently close to the 110 freeway, the  
11 dealership has no freeway visibility. Still, the 110 freeway would only  
12 add an additional 104,000 vehicles to Harbor City Honda's daily traffic  
13 count. In contrast, the proposed relocation site is visible from the  
14 405 freeway, which has a traffic count of 242,000 vehicles. In  
15 addition, 17,909 vehicles travel on 223rd Street for a total traffic  
16 count of approximately 260,000 vehicles per day at the proposed  
17 relocation site. This is a substantial increase in traffic over Harbor  
18 City Honda's current location.

19 56. An optimal location analysis seeks to determine the optimal  
20 location, in terms of maximizing customer convenience, should Harbor  
21 City Honda be relocated. When based on where customers presently  
22 purchase their vehicles, this analysis determined that a location very  
23 close to the proposed relocation site in Carson is the optimal location  
24 for Harbor City Honda.

25 57. Protestant's principal testified that he anticipated losing  
26 20% of his new car sales and 15% of his parts and service business as a  
27 result of the relocation, and that 85% of the lost new car sales would  
28 come from sales lost in the PMA of the relocated dealer. These

1 estimates were not, however, based on any credible analysis, and sales  
2 figures show that Protestant's past sales in the relocated PMA have been  
3 so few that if it lost all of them it would have no significant impact  
4 on its sales or profitability.

5 58. Protestant's expert performed an impact analysis using four  
6 models, which resulted in lost new car sales ranging from 5% to 18%.  
7 Based on those models, he arrived at a weighted figure of 16% for his  
8 prediction of lost sales due to the increased sales competition from the  
9 relocated dealer. This results in around 137 lost sales per year.  
10 Taking into consideration the effect of those lost sales on each of the  
11 dealership's departments, he opines that this would result in a loss of  
12 profit each year of around \$500,000.

13 59. Because Protestant is such a highly profitable dealer, e.g.,  
14 over \$2.5 million profit in 2002, even if the expert's analysis is  
15 accepted in total, Protestant remains a very profitable dealer. While a  
16 ruinous increase in competition may constitute good cause for denial of  
17 a relocation, no showing of that extent of competition has been made  
18 here.

19 Findings Relating to Whether it Will Be Injurious  
20 To the Public Welfare for an Existing  
21 Franchise to Be Relocated  
22 [Veh. Code § 3063(c)]

23 60. The relocation will provide the public with a dealer operating  
24 out of a new facility meeting all of Honda's size and equipment  
25 requirements, in a more upscale neighborhood, with freeway access and  
26 visibility, and providing increased competition in the market place to  
27 both inter-brand and intra-brand competitors. The average Honda  
28 customer in the post-relocation PMA will have to travel less than one  
mile further to get to the new location than it does to the existing

1 location; not a significant distance in view of the benefit received.

2 Findings Relating to Whether the Existing Franchises Are  
3 Providing Adequate Competition and Convenient Consumer  
4 Care for Honda Vehicles in the Market, Including  
5 The Adequacy of Motor Vehicle Sales and Service Facilities,  
6 Equipment, Supply of Vehicle Parts and  
7 Qualified Service Personnel  
8 [Veh. Code § 3063(d)]

9 61. With the exception of Harbor City Honda, all of the  
10 dealerships that serve the Carson RMA have facilities that meet the  
11 requirements of Honda. Honda is not aware of any deficiency or  
12 inadequacy with respect to qualified personnel at any of the dealerships  
13 in the Carson RMA.

14 62. Honda also is not aware of any lack of special tools or  
15 equipment in the Carson RMA.

16 63. With respect to the management of each of the dealers in the  
17 Carson RMA, there are no deficiencies or inadequacies with the exception  
18 that Honda feels that it could be selling "a few more cars." Honda  
19 believes that it has "a good strong group of dealers." Each of the  
20 dealers in the Carson RMA are good citizens and good dealers.

21 64. The Honda dealers in the Carson RMA are maintaining adequate  
22 inventory of parts.

23 65. Harbor City Honda operates out of a small facility that falls  
24 short of nearly all Honda minimum facility requirements, and the  
25 dealer's decision not to further invest in its current facility is  
26 reasonable given the deteriorating conditions around its current  
27 location. Moreover, Harbor City Honda is not located in any of the four  
28 major automobile shopping areas in the Carson RMA.

66. A dealership's ability to provide consumers with adequate and  
convenient customer care is constrained by the facility from which it  
operates. A dealership's sales and service efficiency, as well as its

1 selection, are all affected by the size of its facility. Harbor City  
2 Honda's poor location and underguide facilities are contributing to its  
3 inability to effectively serve the consumers in its area.

4 67. The penetration rates for the Carson RMA, the Harbor City PMA,  
5 and Protestant's PMA, fail to achieve levels which would be expected as  
6 compared to California, Los Angeles metro market, or Orange County  
7 segment adjusted standards. This would indicate that inter-brand  
8 competition is inadequate at present.

9 68. From its present location, Harbor City Honda's penetration in  
10 the Protestant's PMA is low. This indicates that Harbor City Honda is  
11 not providing effective intra-brand competition.

12 69. Protestant is a dealer oriented to high gross profits and is  
13 not price competitive. Protestant's gross profit on new car sales is  
14 approximately \$600 higher than the California average of \$1,414.

15 70. Protestant contends that its inability to penetrate the Signal  
16 Hill PMA, the Carson PMA, and the Carson RMA at the expected sales  
17 levels is due in part to Honda's "tight allocation" of Honda vehicles in  
18 the Carson RMA. As shown during the hearing, however, Protestant  
19 received 154 additional cars out of the supplemental allocation pool in  
20 2002, despite having turned down 98 cars in that same year from its  
21 regular allocation. Moreover, Protestant always has the option to  
22 purchase cars from other dealers, but has made a business decision not  
23 to do so.

24 71. Protestant has ample inventory of Honda vehicles. Protestant  
25 admits that his day's supply of vehicles is higher than other dealers in  
26 the Los Angeles area. Indeed, Protestant had a greater day's supply of  
27 Honda vehicles in its inventory compared to Honda dealers nationally for  
28 every month in 2002, with inventory sometimes as high as over 200

1 percent of the national average.

2 72. Even if allocation was an issue, it cannot explain below-  
3 expected penetration levels in the Carson RMA. By Protestant's own  
4 admission, all dealers in the Carson RMA and elsewhere operate under the  
5 same allocation system. Since Honda's allocation system is applied  
6 equally to all Honda dealers, it does not explain Protestant's inability  
7 to achieve the average penetration levels of other Honda dealers who are  
8 equally burdened by the existing allocation system. Honda's penetration  
9 in many PMAs and census tracts in the greater Los Angeles metro market  
10 exceed the Orange County average.

11 73. Dr. Manuel testified that Protestant's ability to sell  
12 vehicles is hampered because the Signal Hill PMA is directly adjacent to  
13 Norm Reeves Honda in Cerritos, the largest volume Honda dealer in the  
14 United States. Dr. Manuel, however, later acknowledged that other  
15 dealers, such as Buena Park, Downey, and Westminster, which, like  
16 Protestant, are also adjacent to Norm Reeves Honda, were performing at  
17 better than expected sales levels.

18 74. The 4.3 mile distance between the relocated Harbor City Honda  
19 dealership and Protestant is not unusual in a large metropolitan market  
20 such as Los Angeles. Protestant's expert conceded that seven pairs of  
21 Honda dealers are currently located within 5 miles or less from each  
22 other in the Los Angeles and Orange County metropolitan markets.  
23 Moreover, an additional ten pairs of Honda dealers are located 5 to 6  
24 miles apart. That is, seventeen pairs of Honda dealers are currently  
25 located within 6 miles or less from each other in the Los Angeles and  
26 Orange County metropolitan markets.

27 ///

28 ///

1                   Findings Relating to Whether the Relocation of  
2                   the Existing Honda Franchise Would Increase  
3                   Competition And, Thus, Be in the Public Interest  
                  [Veh. Code § 3063(e)]

4           75. All parties agree, and the findings above show, that the  
5 relocation will increase competition. While this may result in a loss  
6 of sales and profit to Protestant if no positive response is made to  
7 that increased competition, there has been no showing that it will  
8 result in Protestant becoming unprofitable. The market demographics  
9 indicate that opportunity exists for Protestant and the relocating  
10 dealer to compete effectively and profitably. The increased competition  
11 will be in the public interest.

12                                   DETERMINATION OF ISSUES

13           76. Protestant has made a significant, permanent investment in its  
14 dealership. If the relocating dealer makes the investment planned at  
15 the relocation site, it will have made a significant, permanent  
16 investment.

17           77. The relocation will have a beneficial effect on the general  
18 retail motor vehicle business and the consuming public in the Carson  
19 RMA. The increased competition, if not countered by affirmative steps  
20 by Protestant, may reduce Protestant's sales and profitability, but not  
21 to the extent that Protestant will become unprofitable. The market  
22 conditions are such that opportunity for additional sales is available  
23 to both Protestant and the relocating dealer.

24           78. It will not be injurious to the public welfare for the  
25 relocation to take place.

26           79. The existing Honda franchisees in the Carson RMA, with the  
27 exception of the dealer seeking to relocate, have motor vehicle sales  
28 and service facilities which meet Honda's requirements and are adequate.

1 The relocating dealer's facility is smaller than Honda requires, and the  
2 planned new facility at the relocation site will provide a much more  
3 adequate facility. There was no showing of inadequate equipment, supply  
4 of vehicle parts, or qualified service personnel in the Carson RMA. The  
5 present level of competition in the Carson RMA is inadequate on both an  
6 intra-brand and an inter-brand basis.

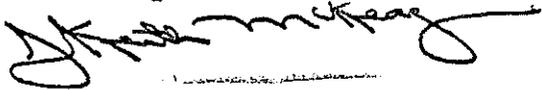
7 80. The relocation of the existing franchise will increase  
8 competition and therefore be in the public interest.

9  
10 **PROPOSED DECISION**

11 Protestant has not met its burden of proof under Vehicle Code  
12 Section 3066(b) to establish that there is good cause not to permit the  
13 relocation of Harbor City Honda from Wilmington to Carson, California.  
14 The protest is overruled. Respondent will be permitted to relocate  
15 Harbor City Honda to Carson, California.

16  
17  
18 I hereby submit the foregoing which  
19 constitutes my Proposed Decision in  
20 the above-entitled matter, as a  
21 result of a hearing before me on the  
22 above dates and recommend the  
23 adoption of this Proposed Decision as  
24 the decision of the New Motor Vehicle  
25 Board.

26 Dated: September 2, 2003

27   
28 By \_\_\_\_\_  
J. KEITH MCKEAG  
Administrative Law Judge

27 Steven Gourley, Director, DMV  
28 Terri Thurlow, Chief,  
Licensing Branch, DMV