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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of)
)
McKENNA-STEPHENS MOTORS, INC., dba)
SUN DATSUN,)
)
Protestant,) Protest No. PR-97-76
)
v.) FILED: August 22, 1977
)
NISSAN MOTOR CORPORATION in U.S.A.,)
)
Respondent.)
_____)

DECISION

Procedural Background

1. Respondent, Nissan Motor Corporation in U.S.A. ("Nissan") gave notice pursuant to Section 3062 of the Vehicle Code^{1/} of its intention to establish a new franchise at the Lambert Road off-ramp of the Orange Freeway in Brea, California ("proposed franchisee").

2. A protest was filed with the New Motor Vehicle Board ("Board") by McKenna-Stephens Motors, dba Sun Datsun, ("Sun Datsun") located at 16050 East Whittier Boulevard, Whittier, California.

^{1/} All references are to the Vehicle Code.

3. A hearing was held pursuant to Section 3066 before Sam W. Jennings, executive secretary and hearing officer of the New Motor Vehicle Board, in Los Angeles, California, commencing on Thursday, September 23, 1976. The protestant was represented by Sidney I. Pilot of the law offices of Sidney I. Pilot, a Professional Corporation. The respondent was represented by Francis J. McLaughlin of the law offices of Lillick, McHose and Charles, its attorneys.

Issues Presented

4. Sun Datsun contends that good cause exists for not establishing the proposed franchise for the following reasons:
- a. That the proposed franchise will reduce the earnings and earning capacity of Sun Datsun and will therefore have an adverse effect upon its permanency of investment.
 - b. That the proposed franchisee has not made a substantial investment in the proposed dealership.
 - c. That the reduced earnings of Sun Datsun will require that costs be cut and will, therefore, make it impossible to maintain adequate service facilities and qualified service personnel. This would have an adverse effect on the consuming public within the relevant market area.

- d. That the resulting reduction in service and personnel would be injurious to the public welfare.
- e. That Sun Datsun and franchisees of the same line make are providing adequate competition and convenient consumer care for motor vehicles of the same line make in the market area.
- f. That the proposed franchise would not increase competition, since it would merely redistribute the existing market which is being adequately served by Sun Datsun and other franchisees of the same line make.

The Board now makes the following Findings of Fact:

Facts Relating to Permanency of Investment
(Section 3063(1).)

5. Sun Datsun has been a Datsun dealer since 1965.
6. Sun Datsun is located in a permanent facility that is approximately 342 feet front by 385 feet in depth.
7. Sun Datsun entered into a lease on the 30th day of December 1965 for the premises at 16050 East Whittier Boulevard, Whittier, California, which lease will expire on April 30, 1986.

8. The principals of Sun Datsun, Mr. Stephens and Mr. McKenna, are personally obligated on the lease.

9. Sun Datsun was the first Datsun dealership that was built completely to Nissan's specifications.

10. Sun Datsun has continued to improve its facility since 1965 to date of hearing.

11. The total net worth of Sun Datsun as of February 28, 1977, is \$383,728.

12. Using a projected gross income for Sun Datsun of \$5,820,096 for calendar year 1977 a net profit of \$78,774 would result; giving the stated percentage decreases in business the following net profit or loss would result:

- a. 30.30% reduction in business for calendar year 1977, net loss \$95,683
- b. 22.43% reduction in business for calendar year 1977, net loss \$31,099
- c. 14.55% reduction in business for calendar year 1977, net profit \$23,498

13. The proposed new dealership would be located in the City of Brea approximately 160 feet east of the Orange Freeway on Lambert Road and is approximately 2.83 acres.

14. The proposed dealer does not have a commitment from the owner of the proposed dealership location to sell that property.

15. The proposed franchisee has not spent any substantial sums directly on the acquisition of property nor construction of facilities at the proposed location.

Facts Relating to the Effect on the Consuming Public
(Section 3063(2).)

16. There are six Datsun dealers within a radius of approximately ten miles of the intended new dealership. Four of the six dealerships (Sun Datsun, Fullerton Datsun, Anaheim Datsun and Ted Block Datsun) within the above-referenced area have only enough service business to utilize approximately 60-70% of their service facilities.

Facts Relating to the Public Welfare
(Section 3063(3).)

17. It was stipulated that if too many dealers exist in a given area that it hurts the individual dealers as well as the consumer.

Facts Relating to Adequate Competition and
Customer Care (Section 3063(4).)

18. Nissan located Sun Datsun to the east of Whittier to serve the markets in the City of Brea, La Habra and Whittier.

19. Nissan stipulated that Sun Datsun is one of their finest dealers.

20. The proposed new dealership would be approximately six miles from Sun Datsun.

Facts Relating to the Public Interest in Increased
Competition (Section 3063(5).)

21. The areas immediately to the north and east of the proposed dealership are substantial open space areas of little or no population.

22. The area south of the proposed dealership is an open space area of relatively low population density.

23. The areas designated as open space areas^{2/} to the north, east and south of the potential new dealership will have little or no significant development in the foreseeable future.

24. The market of the proposed Brea dealership would include Brea, La Habra, Placentia, Yorba Linda and Walnut.

25. Sun Datsun is located in the easterly portion of Whittier, near the City of La Habra, so that its retail sales area includes that area designated as the Brea dealer area by the R. L. Polk Report.

26. Sun Datsun and the proposed Brea dealership are located in the Los Angeles Region, District 1, as delineated by the R. L. Polk Report.

^{2/} See map Appendix A.

27. R. L. Polk, Datsun Passenger Car Registration Report, dated December 1976, for Los Angeles Region, sets forth Datsun Registration as being 6.4% of total car registration; for District 1 as 6.8%, and for Brea Dealer Area as 6.1%.

28. R. L. Polk, Datsun Trucks Registration Report, dated December 1976, for Los Angeles Region, sets forth Datsun registration as being 24.0% of total truck registration; for District 1 as 26.1% and for Brea Dealer Area as 22.2%.

29. Datsun registrations for the year ending December 31, 1976 in the Brea Dealer Area were 316 cars and 134 trucks as compared to 5179 cars and 604 trucks industry registrations.

30. To have raised the Brea dealer area market percentage from 6.1% to the District 1 average of 6.8% for 1976 would have entailed the sale of only 36 more Datsun cars.

31. To have raised the Brea dealer area market percentage of Datsun trucks from 22.2% to the District 1 average of 24% would have entailed the sale of only 24 more Datsun trucks.

32. The proposed new dealer point would be set up to sell 500 units per year.

33. Approximately 25% to 35% of Sun Datsun sales, parts, accessories and service would be lost to the proposed Brea dealership.

The Board determined the issues presented by Sun Datsun as follows:

DETERMINATION OF ISSUES

1. Sun Datsun has established that good cause exists for not establishing the proposed franchise for the following reasons:

(a) The additional proposed franchise in the Brea area will reduce Sun Datsun's earnings and earning capacity and will require that costs be cut and therefore reduce service facilities thus having an adverse effect on the consuming public within the relevant market area. (Paragraphs 4(a) and 4(c)); and

(b) The proposed franchisee has not made a substantial investment in the proposed dealership. (Paragraph 4(b)); and

(c) Sun Datsun and other Datsun franchisees are providing adequate competition and convenient consumer care for Datsun owners. (Paragraph 4(d)); and

(d) The proposed franchise would not greatly increase competition, but would substantially redistribute the existing market which is being adequately served by Sun Datsun and other Datsun dealers in the area. (Paragraph 4(f).).

* * * * *

WHEREFORE THE FOLLOWING ORDER IS HEREBY MADE:

The protest is sustained.

The foregoing constitutes
the decision of the NEW
MOTOR VEHICLE BOARD

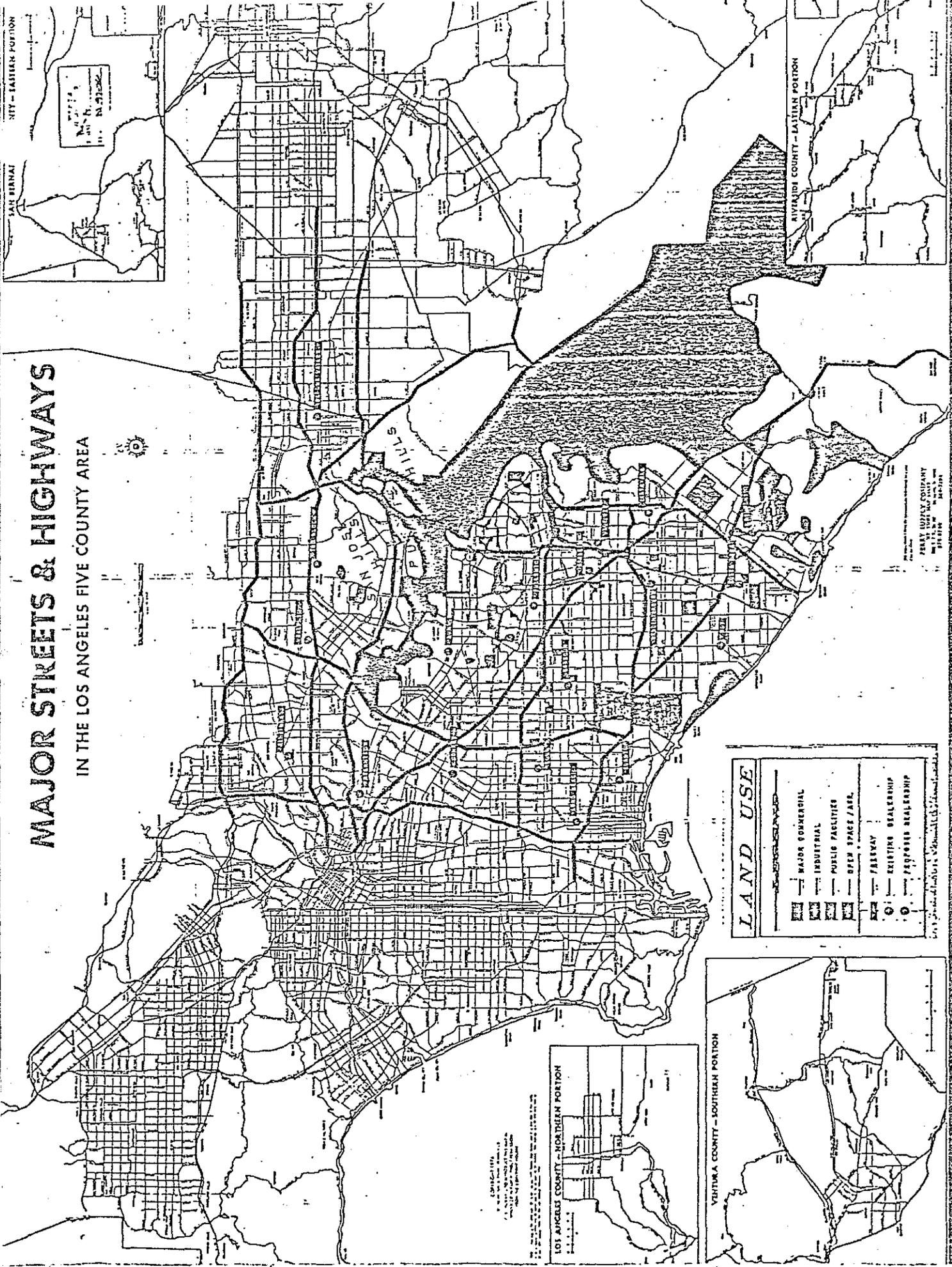
Dated: *8/18/77*

Thomas Kallay
THOMAS KALLAY
President

PR-97-76

MAJOR STREETS & HIGHWAYS

IN THE LOS ANGELES FIVE COUNTY AREA



LAND USE

[Symbol]	MAJOR GOVERNMENT
[Symbol]	INDUSTRIAL
[Symbol]	PUBLIC FACILITIES
[Symbol]	OPEN SPACE / PARK
[Symbol]	RAILROAD
[Symbol]	EXISTING BULKHEAD
[Symbol]	PROPOSED BULKHEAD

