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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board (“Board”) held a General meeting on March 5, 2020, in The William G. Brennan Hearing Room, at the Board’s offices.

Kathryn Doi, President and Public Member, called the meeting of the Board to order at 12:38 p.m.

2. **ROLL CALL**

Board Members Present: Ramon Alvarez C.  
Anne Smith Boland  
Kathryn Ellen Doi  
Ardashes “Ardy” Kassakhian  
Daniel P. Kuhnert  
Bismarck Obando

Board Members Not Present: Inder Dosanjh  
Nanxi Liu

Board Staff Present: Timothy M. Corcoran, Executive Director  
Robin P. Parker, Senior Staff Counsel  
Dawn Kindel, Chief of Staff  
Suzanne Luke, Administrative Services Analyst  
Holly Victor, Mediation Services Analyst  
Eugene Ohta, IT Tech

3. **PLEDGE OF ALLEGIANCE**

Mr. Obando led the members and staff in the Pledge of Allegiance.

Ms. Doi welcomed the two new members recently appointed by Governor Newsom. Anne Smith Boland was appointed as a Dealer Member. She has been Dealer Principal and co-owner of Bob Smith Volvo Cars Calabasas since 2019, and Vice President and co-owner of Bob Smith BMW-Mini Volvo since 2002.

Daniel P. Kuhnert was appointed as a Public Member. He has been an owner of Five Guys franchises in Temecula and Corona since 2009. Mr. Kuhnert was an Executive Vice President of Sales and Marketing at Mitsubishi Motors North America from 2005 to 2009 and was Managing Partner at the Poway Auto Group from 2003 to 2005 and President of Carlsbad Mitsubishi from 1992 to 2001.

Ms. Smith Boland thanked the Board for welcoming her. She looks forward to serving the Board, learning and representing. Mr. Kuhnert indicated that he can bring manufacturer and dealer experiences to the Board even though he has been away from the industry for a while.

Mr. Kassakhian welcomed the new Board members. Ms. Doi thanked the new members for taking the extraordinary steps to go through the process of being able to make this meeting. She also thanked the staff.

4. **APPROVAL OF THE MINUTES FROM THE OCTOBER 10, 2019, SPECIAL MEETING AND DECEMBER 2, 2019, GENERAL MEETING**

Ms. Doi requested that the October 10, 2019, Special Meeting minutes be revised to reflect her concerns that the petition and answer were not verified in Petition No. P-461-19 *Mitsubishi Motors North America, Inc., a California Corporation v. Nextmotors Corporation, a California Corporation dba Oakland Mitsubishi*. The minutes being considered were revised accordingly. Mr. Obando moved to adopt the October 10, 2019, Special Meeting minutes as revised. Mr. Kassakhian seconded the motion. The motion carried unanimously.

Mr. Alvarez moved to adopt the December 2, 2019, General Meeting minutes. Mr. Kassakhian seconded the motion. The motion carried unanimously.

5. **2020 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Mr. Kassakhian moved to nominate Mr. Obando as President. Mr. Obando indicated that he would like to nominate Ms. Doi as President. Mr. Kassakhian withdrew his nomination. Mr. Obando indicated that given his work commitments, he wants the Board to have consistency but he would be delighted to serve if that is what the Board desires. Mr. Kuhnert moved to close the nominations, with Mr. Alvarez seconding the motion. This motion to close the nominations carried unanimously. Mr. Alvarez seconded the motion to nominate Ms. Doi as President. The motion to nominate Ms. Doi as President carried unanimously.

Mr. Kassakhian moved to nominate Mr. Alvarez as Vice President. Mr. Kuhnert moved to close the nominations, with Mr. Kassakhian seconding the motion. This motion to close the nominations carried unanimously. Mr. Kassakhian seconded the motion to nominate Mr. Alvarez as Vice President. The motion to nominate Mr. Alvarez as Vice President carried unanimously.

6. **DISCUSSION AND CONSIDERATION OF WHETHER TO CONVERT THE AD HOC COMMITTEE THAT WAS CHARGED WITH REVIEWING INDUSTRY-RELATED ADVERTISING LAWS TO A STANDING BOARD COMMITTEE, BY THE BOARD PRESIDENT**

Mr. Corcoran provided an overview of the Ad Hoc Committee and the American Association of Motor Vehicle Administrators' ("AAMVA") "Best Practices for the Regulation of Internet Vehicle Sales." After a lengthy discussion with input from Mr. Corcoran and the members, Ms. Doi dissolved the Ad Hoc Committee to Review Industry-Related Laws and the Ad Hoc Committee to Review the Mission and Vision Statements. Included within the Government and Industry Affairs Committee will be the duties of the former Ad Hoc Committee to Review Industry-Related Laws.

7. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, LEGISLATIVE COMMITTEE, POLICY AND PROCEDURE COMMITTEE, AND AD HOC COMMITTEES (IF APPLICABLE), BY THE INCOMING BOARD PRESIDENT**

After a brief discussion off the record, Ms. Doi made the following committee appointments:

**ADMINISTRATION COMMITTEE**

Ardy Kassakhian, Chair  
Daniel Kuhnert, Member

**BOARD DEVELOPMENT COMMITTEE**

Nanxi Liu, Chair  
Ardy Kassakhian, Member

**EXECUTIVE COMMITTEE**

Kathryn Ellen Doi, President  
Ramon Alvarez C., Vice President

**FISCAL COMMITTEE**

Anne Smith Boland, Chair  
Nanxi Liu, Member

**GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Ramon Alvarez C., Chair  
Anne Smith Boland, Member

**LEGISLATIVE COMMITTEE**

Bismarck Obando, Chair  
Inder Dosanjh, Member

POLICY AND PROCEDURE COMMITTEE

Daniel Kuhnert, Chair  
Inder Dosanjh, Member

8. **APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS" BY THE INCOMING BOARD PRESIDENT**

This matter was pulled from the agenda since the incoming President is a Public Member and the incoming Vice President is a Dealer Member. If both the incoming President and Vice President were Dealer Members this designation would be necessary to comply with the Board adopted policy.

9. **REPORT ON NON-SUBSTANTIVE CHANGES TO THE PROPOSED AMENDMENTS TO SECTIONS 551.25 (SUBSTITUTION OR WITHDRAWAL OF COUNSEL) AND 553.75 (NONCOMPLIANCE) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning non-substantive changes to the proposed regulatory text of Sections 551.25 and 553.75 of Title 13 of the California Code of Regulations. Ms. Parker indicated that the Executive Committee approved the changes suggested by the California State Transportation Agency General Counsel, which enabled the Board to move forward with the rulemaking packet. These regulations were already approved and operative on February 26, 2020, because they are non-substantive.

As indicated in the memo, the new changes are highlighted yellow as follows:

§ 551.25. Substitution or Withdrawal of Counsel.

(a) The party to a protest, or petition ~~or appeal~~ may substitute counsel of record at any time. It shall be evidenced by a writing signed by the party and new counsel of record and filed with the board. The writing shall be served on all other parties named in the proceeding.

(b) Counsel of record for a party may not withdraw from a protest, or petition ~~or appeal~~ without permission from the board. To obtain permission, counsel must file and serve a written request to withdraw or be relieved as counsel in compliance with Article 1, section 551.19 that satisfies the requirements of Rule 3.1362 of the California Rules of Court (Rev. 1/2017), which is hereby incorporated by reference, and Code of Civil Procedure section 284. Declarations of counsel may be filed under seal, but must be served on the party of the moving counsel, who then has an opportunity to be heard.

(c) Substitution or withdrawal of counsel does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; Rule 3.1362, California Rules of Court; and Section 284, Code of Civil Procedure.

§ 553.75. Noncompliance.

The New Motor Vehicle Board may consider any failure of a manufacturer or distributor to comply with any provisions of this Chapter to be good cause to exercise its authority pursuant to Vehicle Code Section 3050(e)(b).

Note: Authority cited: Section 472.5(f), Business and Professions Code; and Section 3050, Vehicle Code. Reference: Sections 472.5(b) and (f), Business and Professions Code; and Section 3050(e), Vehicle Code.

There was no Board action as this matter was for information only.

10. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH VEHICLE CODE SECTIONS 3064/3074 AND 3065/3075 (THE FILING OF STATUTORILY REQUIRED SCHEDULES AND FORMULAS) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Danielle Phomsopha, and Eugene Ohta updating manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. Ms. Parker reported that this is the last annual memo the members will receive because at its December 2019 meeting, the Board revised its policy in light of Assembly Bill 179. In January of each year an annual notice will be issued instead.

In response to Ms. Doi's question, Ms. Parker indicated that the staff are not tracking down manufacturers and distributors for compliance anymore. An annual notice is being issued and filings are being collected; it is the obligation of the manufacturers and distributors to comply.

As indicated in the memo, 48 manufacturers/distributors within the Board's jurisdiction who were required to file mandated schedules and formulas did, so there was 100% compliance.

There was no Board action as this matter was for information only.

11. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum and revised *Guide to the New Motor Vehicle Board* from Tim Corcoran and Robin Parker. Ms. Parker reported that the Guide was exhaustively reviewed and there were numerous changes pertaining to legislation effective January 1, 2020 (Assembly Bill 179). Ms. Parker indicated that there were two additional amendments to the *Guide*: (1) the composition of the Board was updated to reflect the two new members; and, (2) on page 7, the subdivision reference to Vehicle Code section 3066 should be (f) instead of (d).

Mr. Obando moved to adopt the revised *Guide to the New Motor Vehicle Board* with the amendments. Mr. Alvarez seconded the motion. The motion carried unanimously.

12. **UPDATE ON THE BOARD'S WEBSITE THAT INCLUDES THE REVISED MISSION AND VISION STATEMENTS - ADMINISTRATION COMMITTEE**

Mr. Corcoran provided the members with a screen shot of the Board's revised home page that reflects the new Mission and Vision Statements and also encompasses the State's new template. Mr. Corcoran indicated that DMV maintains the Board's website so they worked with staff to incorporate these changes.

There was no Board action as this matter was for information only.

13. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1<sup>ST</sup> QUARTER OF FISCAL YEAR 2019-2020, DISCUSSION OF THE ANNUAL BOARD FEE AND STATUS ON THE BOARD'S COLLECTION OF ITS ANNUAL FEES - FISCAL COMMITTEE**

The members were provided with a memorandum from Tim Corcoran, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for the 1<sup>st</sup> quarter of fiscal year 2019-2020, the annual Board fee, and the status of the Board's collection of its annual fees. Ms. Luke indicated that for the first quarter the Board started with an appropriation of \$1.7 million, a beginning reserve balance of \$2.6 million, revenues totaling \$1.1 million, ending with the current reserve balance of \$3.4 million. Ms. Luke reported that the Board expended 22% of its appropriated budget for the first quarter. Furthermore, there is no need for an adjustment to the fee structure at this time with the current reserve balance. In addition, the Board's annual fee collection is nearly completed with only four payments outstanding of the 162 manufacturers invoiced.

There was no Board action as this matter was for information only.

14. **CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR FISCAL YEAR 2020-2021 - FISCAL COMMITTEE**

The members were provided with a memorandum from Dawn Kindel concerning the out-of-state travel plans for fiscal year 2020-2021. As indicated in the memo, the proposed out-of-state trips in fiscal year 2020-2021 are as follows:

- National Association of Motor Vehicle Boards and Commissions (NAMVBC) 2020 Fall Conference
  - Location and dates will be determined in early March 2020.
  - Staff proposes sending the Executive Director to represent the Board. Travel costs are unknown at this time.
- National Automobile Dealers Association (NADA) 2021 Show
  - New Orleans, LA. January 21-24, 2021

- Staff proposes sending the Executive Director to represent the Board. Travel costs for this trip will be approximately \$2,400.

Miss Kindel indicated that since the memo was drafted, the NAMVBC indicated their Annual Conference would likely be in Nashville, Tennessee, which is a banned state. If that is the case, there will be no Board representation at this event.

With regards to attending NADA, Mr. Alvarez and Mr. Kassakhian expressed an interest in attending. Ms. Doi commented that perhaps the Board could approve up to three staff and up to three Board members to attend NADA.

Mr. Corcoran provided an overview of Assembly Bill 1887 (effective January 1, 2017). It charged the Attorney General with maintaining a list that would prohibit state agencies from having employees travel to states that have been deemed as enacting a law that is discriminatory in nature. There are currently 11 states on the list including Tennessee. Mr. Corcoran suggested the general practice of including a caveat on any out-of-state travel approvals as long as it complies with the prohibitions set forth in Assembly Bill 1887. In response to Ms. Doi's question, Mr. Corcoran indicated that the statute (Gov. Code § 11139.8) prohibits the employer from requiring an employee to travel on state business and that would probably include Board members.

Ms. Doi moved to approve up to three staff members and up to three Board members to attend NAMVBC and NADA subject to the prohibition and the Governor's approval on funding. Mr. Obando seconded the motion. The motion carried unanimously.

15. **DISCUSSION CONCERNING THE FISCAL IMPACT OF THE INCREASED BILLING RATES FOR THE ATTORNEY GENERAL EFFECTIVE SEPTEMBER 1, 2019 - FISCAL COMMITTEE**

Ms. Luke provided the members with a memorandum concerning the fiscal impact of the increased billing rates for the Attorney General that were effective September 1, 2019. As indicated in the memo, according to the Attorney General, the costs for providing legal services have increased over the last 10 years and an increase in the legal services rates for the Department of Justice is needed for it to recover its costs. The new hourly rate for attorney services is \$220, for paralegal services \$205, and for auditor and research analyst services \$195. Based on fiscal year 2018-2019, the fee increase would be approximately \$10,000.

Ms. Luke indicated that although there will be an increase in the Attorney General costs, the impact of the rate increase will be minimal on the Board.

There was no Board action as this matter was for information only.

16. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning the annual review of Board adopted policies. As indicated in the memo, the new policies that were approved in 2019 pertain to:

- The *Guide to the New Motor Vehicle Board* and *Informational Guide for Manufacturers and Distributors* were updated.
- The Board Delegations were updated.
- A Legislative Committee comprised of the Executive Committee was created. The Legislative Committee will provide California State Transportation Agency (CalSTA) with its own analysis, drafted by staff counsel and approved by the Committee on any Legislation of Special Interest.
- The Legislative Policy was updated to allow Board staff to provide technical and procedural advice to stakeholders on pending legislation but absent CalSTA approval, the Board would not publicly take position on any bill.
- The Board adopted a policy pertaining to Proposed Stipulated Decisions and Orders that are confidential and filed under Board seal. If the parties have jointly agreed that the terms of a Proposed Stipulated Decision and Order are confidential and should be maintained under Board seal to effect the agreed upon terms and conditions, then that is the criteria used by the Board.
- The Mission and Vision Statements were revised
- The Board policy concerning manufacturer and distributor compliance with Vehicle Code sections 3064/3074 and 3065/3075 (the filing of statutorily required schedules and formulas) was revised in light of Assembly Bill 179 to provide for the return of an Annual Notice.
- The Parliamentary Procedures were amended to automatically fill vacant committee Chair positions with the Member.

There was no Board action as this matter was for information only.

17. **CONSIDERATION OF THE EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST GUIDE (VEHICLE CODE SECTION 3085, ET SEQ.) - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and *Export or Sale-for-Resale Prohibition Policy Protest Guide*. Ms. Parker reported that there were minor changes from the previous version before the Board's authority sunset effective January 1, 2019.



Ms. Parker indicated that an amendment was necessary to reflect the current composition of the Board to include the two new members.

Mr. Obando moved to adopt the 2020 *Export or Sale-for-Resale Prohibition Policy Protest Guide* as amended. Mr. Alvarez seconded the motion. The motion carried unanimously.

18. **CONSIDERATION OF REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS, WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memo and a revised *Informational Guide for Manufacturers and Distributors* from Tim Corcoran and Robin Parker. As indicated in the memo, the only substantive change from the prior version is the addition of a footnote in the introduction to reflect the repeal of the Board's jurisdiction to hear appeals effective January 1, 2020.

Ms. Parker indicated that an amendment was necessary to reflect the current composition of the Board that includes the new members.

Mr. Alvarez moved to adopt the revised *Informational Guide for Manufacturers and Distributors* as amended. Mr. Obando seconded the motion. The motion carried unanimously.

19. **ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning the assignment of cases to Board ALJs in 2019. Ms. Parker reported that there were 18 law and motion hearings, nine discovery hearings (rulings on objections), six mandatory settlement conferences, and three merits hearings for a total of 17 days. Ms. Doi inquired whether staff anticipated a similar schedule this year. Ms. Parker indicated that there had already been a bifurcated merits hearing and the continuation of a merits hearing from 2019 so the Board would likely consider a couple more proposed decisions this year. With regards to law and motion, Ms. Parker did not think it would be as busy but there were two hearings next month.

There was no Board action as this matter was for information only.

20. **CONSIDERATION OF PROPOSED REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

- A. Form and Filing of Petition (13 CCR § 556);

B. Filing of Protest Pursuant to Vehicle Code Section 3065.3 (13 CCR § 586.5);

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning revisions to proposed regulatory amendments. Ms. Parker indicated that at the December 2, 2019, General Meeting, the Board adopted a number of regulations with the exception of two. The first regulation amends Section 556 with two alternatives. The second regulation adds Section 586.5, which pertains performance standard protests (Veh. Code § 3065.3).

Ms. Doi remarked that Section 556 relates to the kind of petition that led to the DMV investigation pertaining to the Volvo subscription program and another petition that came before the Board that was not verified and did not have any declarations. These alternatives are proposed so people filing petitions have an idea that the Board is expecting some evidence or documents it can rely on. In response to Ms. Doi's request, Ms. Parker indicated that the only difference between the two options is the addition of the words "or documents." The proposed text, as indicated in the memo, illustrates this

Alternative 1: § 556. Form and Filing of Petition.

The form of the petition shall conform with the provisions of Article 6 herein. The petition shall be filed with the executive director of the board. The petition shall clearly identify the facts, legal authority, and relief sought and include declarations or other evidence that support the petition.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(e), Vehicle Code.

Alternative 2: § 556. Form and Filing of Petition.

The form of the petition shall conform with the provisions of Article 6 herein. The petition shall be filed with the executive director of the board. The petition shall clearly identify the facts, legal authority, and relief sought and include declarations or other evidence or documents that support the petition.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(e), Vehicle Code.

Mr. Kuhnert moved to adopt alternative 2 of Section 556. Mr. Obando seconded the motion. The motion carried unanimously.

The members moved on to consider new Section 586.5, which outlines the filing of a protest pursuant to Section 3065.3. The proposed text follows:

§ 586.5. Filing of Protest Pursuant to Vehicle Code Section 3065.3.

(a) Protests filed with the board under this section of the Vehicle Code shall be filed as follows:

(1) The protest shall set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.

(2) The franchisee may submit, as exhibits to the protest, photographic, documentary or similar physical evidence relevant to the matter in support of the protest with an appropriate description thereof in the protest sufficient to identify them and to explain their relevancy.

(3) The franchisee shall set forth in the protest its mailing address and telephone number and the name, mailing address and telephone number of the franchisee's attorney or authorized agent, if any. All correspondence with the franchisee shall thereafter be addressed to said address, if it represents itself, or to the address of its attorney or agent, if it is represented by an attorney or agent.

(4) The franchisee shall indicate either that it does or does not desire to appear before the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3065.3, Vehicle Code.

Ms. Parker indicated that it did not make sense to add performance standard protests to existing regulations because they are so different so she proposed a standalone provision. The language is nearly identical to the provisions that pertain to the other types of protests. Ms. Doi commented that in the absence of the new regulation, there would be no guidance or direction with respect to the filing of a performance standard protest. Ms. Parker indicated that a litigant would look to regulations pertaining to similar protests.

Mr. Obando moved to adopt the proposed regulations. Mr. Kassakhian seconded the motion. The motion carried unanimously.

Ms. Doi read the following statement into the record:

Given the Board's decision to go forward with the proposed regulations, I hereby delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List. During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments.

By the Board instructing staff to go forward with the proposed regulations, this does not necessarily indicate final Board action. If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulations. Furthermore, if the staff

decides that substantive modifications to the proposed text are necessary, the Board will consider those modifications at a noticed meeting. However, non-substantive changes involving format, grammar, or spelling suggested by the Office of Administrative Law or the staff will not be considered by the Board because they are non-regulatory in nature. They will be considered by the Executive Committee and ultimately reported to the Board at future meetings. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

21. **CONSIDERATION OF 2020 RULEMAKING CALENDAR - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and 2020 Rulemaking Calendar from Tim Corcoran and Danielle Phomsopha. Ms. Parker reported that the format from previous years has changed so it is accessible and can be posted on various State websites. The Board is late in considering this since the Board typically meets in January or February. The Rulemaking Calendar has already been approved by California State Transportation Agency. The staff will submit it to the Office of Administrative Law for their information. The deadline has passed for it to be published in the California Regulatory Notice Register.

Mr. Alvarez moved to adopt the 2020 Rulemaking Calendar. Mr. Kuhnert seconded the motion. The motion carried unanimously.

22. **DISCUSSION CONCERNING WHETHER THE BOARD SHOULD PROMULGATE REGULATIONS PERTAINING TO PETITIONS SEEKING RELIEF PURSUANT TO SUBDIVISION (b)(1) AND/OR (b)(3) OF VEHICLE CODE SECTION 3050 (DEPARTMENT OF MOTOR VEHICLES INVESTIGATION AND/OR LICENSING ACTION) - POLICY AND PROCEDURE COMMITTEE**

This matter was deferred to allow time to draft something in writing that describes the background.

23. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Corcoran provided the members with a report on Administrative Matters, which is an ongoing accounting of all the projects that the Board staff are working on and the various Board committees that are involved in those projects. Mr. Corcoran discussed the Board's periodic newsletter, the *In-Site*, which historically was posted on the Board's website and emailed to a small number of people. Due to the ADA (Americans with Disabilities Act)

requirements, if the Board goes forward with the newsletter, it will have a different look. Additionally, it has not been published in a couple of years and no one is asking for it. Mr. Corcoran indicated that this will be agendaized at a future meeting for member input. Ms. Doi requested that when it is put on the agenda that the members be provided with past copies of the *In-Site*, so there can be a full discussion of what the newsletter was and what it could be.

Next, Mr. Corcoran discussed the file hosting service where staff created a process to make Board meeting materials digitally available to the members. Even though the Board has the secure-file transfer system in place, there is more work to do in terms of making it easier to load those materials on a device. With DMV's assistance, the staff would like to have tablets ready for the members so when they arrive for a meeting, the tablet is preloaded with the materials. The members can still request a paper copy of materials.

Ms. Parker reported that 12 protests had recently been dismissed and nine new protests have been filed so far this year. To wrap up 2019, Ms. Parker indicated that 49 protests were filed, predominantly terminations and establishments, and 27 notices of termination were issued. With regards to judicial matters, the Board's brief is due in the writ filed by General Motors in regard to the Folsom Chevrolet decision the Board adopted. Oral arguments were scheduled for the end of April (subsequently continued to July 30, 2020).

There was no Board action as this matter was for information only.

#### 24. **SELECTION OF BOARD MEETING DATES FOR 2020**

The members were provided with a memorandum from Tim Corcoran concerning Board meeting dates for 2020. The members went off the record for this discussion. Ms. Doi indicated that the April 23, 2020, General Meeting will now be June 2 in Glendale and a Special Meeting will be held July 10, 2020, at a location to be determined. (Due to the pandemic, the June 2 meeting will now be held on July 10, 2020.)

#### 25. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

#### **RATIFICATION OF THE HIRING DECISION OF THE ADMINISTRATIVE LAW JUDGE CANDIDATE BY ALL MEMBERS OF THE BOARD - ADMINISTRATION COMMITTEE**

The Public and Dealer members of the Board considered ratifying the hiring decision of Steven Smith. Mr. Alvarez moved to offer the position to ALJ Smith conditionally upon the completion of the DMV hiring process. Mr. Kassakhian seconded the motion. The motion carried unanimously.

26. **OPEN SESSION**

The members of the Board returned to open session. Ms. Doi announced the decision in Agenda item 25. ALJ Smith commented that he is mindful of the role that he would play for the Board as essentially an extension of the members. ALJ Smith thanked the members for this opportunity.

27. **DISCUSSION CONCERNING DEVELOPING PERFORMANCE RATING CRITERIA FOR THE BOARD'S EXECUTIVE DIRECTOR POSITION - ADMINISTRATION COMMITTEE**

Mr. Corcoran left the meeting during this discussion. Miss Kindel provided the members with a template for the performance review of the Executive Director. There has not been a formalized process in the past. Miss Kindel tailored a review from another department and is looking for input from the members. Ms. Doi thought it would be fair for Mr. Corcoran to have something more formal that demonstrates the kind of job the Board believes Mr. Corcoran has been doing. The review criteria would potentially apply to any future executive director, so it is not specific to Mr. Corcoran.

Mr. Kassakhian indicated the City of Glendale uses "meets standards," "exceeds standards" and "needs improvement;" he offered to provide a sample matrix. Mr. Obando indicated that the performance measures at his job is three levels as well. There is some room for commentary, discussion and goal setting. Mr. Obando inquired about the "salary increase recommendation." Miss Kindel clarified that the Board can make the recommendation, but it would be subject to approval by the Governor's Office. And, a typical recommendation for an increase is 5 percent.

Mr. Kuhnert inquired whether each member would have equal weight. Ms. Doi commented that the members could all meet in Closed Session, discuss the criteria, and then come to a uniform appraisal. Miss Kindel remarked that in past performance reviews for the Executive Director there has been a consensus with all the Board members in Closed Session but there was not a formalized writing.

There was no Board action as this matter was for information only.

28. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

29. ADJOURNMENT

With no further business to discuss, the meeting was adjourned at approximately 2:46 p.m.

Submitted by 

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TIMOTHY M. CORCORAN  
Executive Director

APPROVED:



Kathryn Ellen Doi  
President  
New Motor Vehicle Board