

P.O. Box 188680
Sacramento, California 95818-8680
Telephone: (916) 445-1888
Contact Person: Robin Parker
www.nmvb.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on December 7, 2021, via Zoom and teleconference. Bismarck Obando, President and Public Member, called the meeting of the Board to order at 9:33 a.m.

President Obando welcomed everyone to the meeting and stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff at (916) 445-1888 or nmvb@nmvb.ca.gov. President Obando also set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Ramon Alvarez C. (left at 12:07 p.m.)
Anne Smith Boland
Kathryn Ellen Doi
Inder Dosanjh (left at 11:55 a.m.)
Ryan Fitzpatrick
Ardashes “Ardy” Kassakhian (arrived at 11:47 a.m.)
Bismarck Obando
Jacob Stevens

Board Members Not Present: Nanxi Liu

Board Staff Present: Timothy M. Corcoran, Executive Director
Dawn Kindel, Assistant Executive Officer
Robin P. Parker, Chief Counsel
Danielle R. Phomsopha, Senior Staff Counsel
Suzanne Luke, Administrative Services Analyst
Holly Victor, Mediation Analyst
Lee Moore, Mediation Analyst
Garrett Porter, (former) Legal Assistant
Anthony M. Skrocki, Administrative Law Judge

Mr. Corcoran noted that a quorum was established for general business and case management matters.

3. **APPROVAL OF THE MINUTES FROM THE FOLLOWING MEETINGS:**

- a. February 16, 2021, General Meeting;
- b. February 16, 2021, April 7, 2021, August 27, 2021, and September 15, 2021, Special Meetings;
- c. March 17, 2021, May 20, 2021, June 23, 2021, and August 24, 2021, meetings of the Government and Industry Affairs Committee; and
- d. July 21, 2021, meeting of the Ad Hoc Committee on Equity, Justice and Inclusion.

Member Stevens moved to adopt the minutes listed in items 3.a. through d. on the agenda. Member Alvarez seconded the motion. The motion carried unanimously.

4. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO DANIEL P. KUHNERT, FORMER PUBLIC BOARD MEMBER**

Member Alvarez moved to present a Resolution to Daniel P. Kuhnert, former Public Member, in recognition of his contribution to the New Motor Vehicle Board. Member Doi seconded the motion. The motion carried unanimously. President Obando noted that resolution will be mailed to the members for their signatures.

5. **ANNUAL REVIEW OF NEW MOTOR VEHICLE BOARD MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

The members were provided with a memo from Tim Corcoran concerning the Board's current mission and vision statements. Mr. Corcoran reported that these statements were last adopted two years ago and prior to that, the previous mission and vision statements were in place for approximately eight years. When the statements were amended two years ago, Committee members worked in conjunction with the Department of Motor Vehicles on a strategy session and the resulting draft was considered by the full Board.

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

6. **REPORT ON NON-SUBSTANTIVE CHANGES TO PROPOSED REGULATORY AMENDMENTS IN TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - EXECUTIVE COMMITTEE**

- a. Definitions. (13 CCR § 550)
- b. Dismissals of Petitions and Protests. (13 CCR § 551.8)
- c. Notice of Assignment of Administrative Law Judges; Peremptory Challenges. (13 CCR § 551.12)
- d. Filing Fees. (13 CCR § 553.40)
- e. Form and Filing of Petition. (13 CCR § 556)
- f. Answer-Time of Filing; Form and Content. (13 CCR § 558)

- g. Filing of Protest, Schedules of Compensation for Preparation and Delivery Obligations, Warranty Reimbursement Schedules or Formulas, and Franchisor Incentive Program Reimbursement Pursuant to Vehicle Code Sections 3064, 3065, 3065.1, 3074, 3075, and 3076. (13 CCR § 586)
- h. Filing of Protest Pursuant to Vehicle Code Section 3065.3 (13 § 586.5)
- i. Hearings by Board or by Administrative Law Judge. (13 CCR § 590)

The members were provided with a memo from Tim Corcoran, Robin Parker, and Danielle Phomsopha regarding non-substantive changes to the proposed regulatory text that implement Assembly Bill 179, which was effective January 1, 2020. Ms. Phomsopha indicated that the final rulemaking packets were reviewed by the Office of Administrative Law and as notes in the memo it suggested the following non-substantive changes:

- For all authority and reference sections, OAL suggested the Board remove references to all subsections. For example, 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.
- For Section 550(u), OAL suggested additional language in the definition of Protestant as follows: “For protests filed pursuant to Vehicle Code section 3085, an association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, is a protestant.”

The Executive Committee approved these changes so the staff could proceed with the proposed rulemaking. Pursuant to the Board adopted policy, this matter was brought to the attention of the full Board.

President Obando asked if there is additional rulemaking that must be done to complete the implementation of AB 179. Ms. Phomsopha indicated there is one more set of amendments to the regulations pertaining to Certified Mail and the repeal of appeals to complete, which will be considered by the Board later in this meeting.

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

7. **ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF - ADMINISTRATION COMMITTEE**

Dawn Kindel and Lee Moore provided the members with a memo on training programs attended by the staff. Miss Kindel reviewed the training and indicated that staff training is now provided to the members on a bi-monthly basis via the Administrative Matters Update so this annual report will be discontinued. The staff, including Miss Kindel and Mr. Corcoran, took implicit bias training.

Miss Kindel also indicated that Ms. Moore is now the training coordinator for staff. She has coordinated the training for the last six months. In addition, all training completed last year was done virtually.

President Obando was pleased the staff took implicit bias training and hopes it will assist the work of the Ad Hoc Committee on Equity, Justice and Inclusion with the upcoming workshop.

Member Doi was pleased that all training was cost-effective, and staff took advantage of the available resources.

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

8. **DISCUSSION AND CONSIDERATION OF OPTIONS TO MOVE THE BOARD'S OFFICES - ADMINISTRATION COMMITTEE**

The members were provided with a memo from Tim Corcoran, Dawn Kindel, and Suzanne Luke regarding options to move the Board's offices. Mr. Corcoran indicated that the Board's office has been in its current location for many years. The property owner is no longer interested in continuing our long-term lease and the Board is currently in a soft-term lease, which can be ended by either party at any time. Therefore, the Board must look for a long-term solution, knowing the current building isn't an option.

Additionally, Mr. Corcoran indicated that telework has been embraced by all staff, so the Board can look for a smaller space than it currently has. Staying close to the current location for the convenience of staff and Board Members who arrive at the nearby airport is important.

As indicated in the memo, three options were presented to the Board for consideration:

(1) **Relocate to the DMV Headquarters' Campus**

DMV has a private space available to house the Board's offices within the DMV's main headquarters building at 2415 1st Avenue, in Sacramento. The space will require one-time tenant improvements, including construction and modular furniture, of approximately \$1,228,000 in order to make the space useable. This one-time cost would be paid for out of the Board's reserve funds which can be allocated for this purpose via a Budget Change Proposal. This location has 24/7 security and Board staff would have on-site access to human resources and information technology assistance. Parking is available and affordable, and the location is only one mile from the current location so staff commutes would not be negatively affected. DMV has numerous modern conference rooms to accommodate our meeting and hearing needs. The preliminary costs are:

Estimated Expenses	Sq. Ft.	Price/Sq. Ft	Per Month
Rent (including janitorial and utilities)	4,479	\$2.55	\$11,421

DGS Lease Fees			\$219
Telecom			\$3,039
Total Ongoing Expense			\$14,679

(2) Relocate to a DGS owned facility in the Sacramento region

The estimate below is based on a general market search for a DGS owned facility within the Sacramento region. The square footage is based on the Board's current footprint with the elimination of our on-site conference space. Based on the rate quoted, the Board would have to increase its fees in order to afford a higher lease payment.

Estimated Expenses	Sq. Ft.	Price/Sq. Ft	Per Month
Rent	6,941	\$6.63	\$46,019
DGS Lease Fees			\$884
Janitorial, Utilities, security, etc.			\$9,318
Total Ongoing Expense			\$56,221

(3) Remain in current location if agreed upon by the lessor.

The current costs are noted below:

Current Expenses	Sq. Ft.	Price/Sq. Ft	Per Month
Cost for Existing Office (janitorial, maintenance, utilities included)	8,613	\$1.53	\$13,178
DGS Lease Fees			\$253
Total Current Expense			\$13,431

President Obando indicated that the Board has been anticipating the need to move for many years now. He inquired as to when the Board will relocate once the Board approves of the move and Miss Kindel indicated that if the Board were to approve a move to the DMV location, a Budget Change Proposal request would go to the Department of Finance to begin the process of allocating the Board's reserve money for the move. The Board would also need to complete construction on the new facility to set it up its offices. Therefore, the timeframe would be approximately 12-14 months.

Miss Kindel confirmed that the Board will have the ability to utilize and reserve conference rooms at DMV headquarters for hearings and meetings. There is the possibility that the Board may have one conference room dedicated to it to hold settlement conferences, merits hearings, Board meetings and industry roundtables. There will also be parking for visitors.

Mr. Corcoran indicated that staff also inquired about hoteling space if the Board were able to limit in-office days. That is what led to considering the unutilized space at DMV. This

move, if approved would allow the Board to move out of a dedicated space and be co-located.

Mr. Corcoran also indicated that the cost estimate to move and build-out the space to make it suit the Board's needs is on the high-end to ensure all costs are covered. Despite that, Mr. Corcoran would not anticipate a need to increase the Board fees to cover this cost since it has a couple years' operating costs in our reserves.

Although there are COVID-related impacts, as well as supply and chip shortage issues affecting vehicle sales, this is something the staff will proactively monitor, separate from the move, in order to determine if the Board needs to explore a fee increase to maintain a healthy reserve balance.

Mr. Corcoran stated that staff have been updated on the potential move and the DMV location meets their needs since the new location would be within a five-mile radius of the current location and there is affordable parking.

In response to Member Doi's questions, Mr. Corcoran shared that the Board will have access to all conference rooms at the DMV at no additional charge. There is a reservation system that allows people to reserve rooms in advance. Mr. Corcoran looks forward to working with DMV on setting up a formal hearing room, either with the Board's current furniture or an alternative setup.

In response to Member Alvarez's inquiry, Mr. Corcoran and Miss Kindel indicated that they believe since the construction is being worked on internally, the Board would not be going through the bidding process since there is not an outside contractor. Staff will monitor this as the process continues and advise the Board if there are any cost or bidding changes.

Staff will also monitor the costs to buildout and construct the new location to meet the Board's needs with the hope that costs come in lower than the estimate provided. Staff have visited the space and are able to see that the space generally meets the Board's needs, using modular offices to save money. More details will be forthcoming if the Board approves this move.

In response to Member Doi's inquiry, Mr. Corcoran explained that the Board will have a sufficient number of cubicles or offices for each staff member, plus drop-in spaces for judges who may want to use space.

Member Stevens noted he appreciates the efficiency that will be gained by the new location and staff's diligence in coming up with this path forward.

Member Alvarez moved to direct staff to proceed with looking at the DMV space. Member Fitzpatrick seconded the motion. Member Doi offered a friendly amendment to the motion that would be to adopt the Committee's recommendation to move the Board's offices to

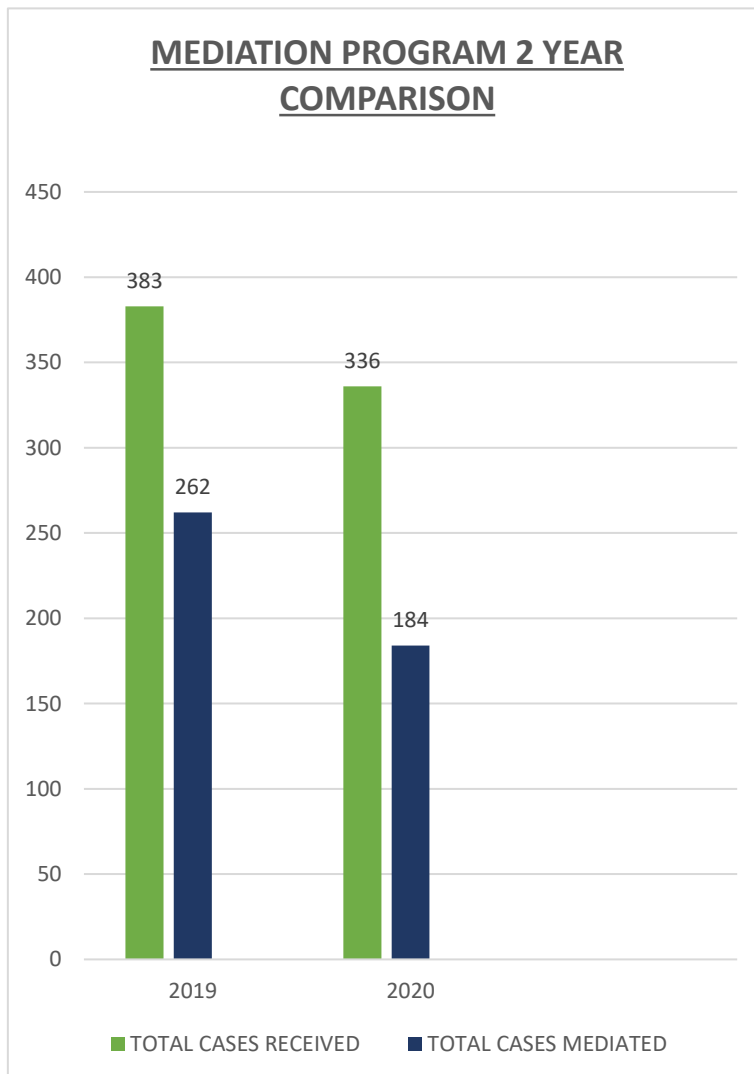
the DMV headquarters campus. Mr. Alvarez accepted the amendment. The motion carried unanimously.

9. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION SERVICES PROGRAM - ADMINISTRATION COMMITTEE**

The members were provided with a memo from Dawn Kindel, Holly Victor, and Lee Moore regarding the annual update on the Board Consumer Mediation Services Program. Ms. Victor noted that, as indicated in the memo, in 2020 there were 336 mediation cases received. Of those, 184 were completely mediated; 152 were not mediated due to lack of jurisdiction, no response from the dealer or manufacturer, or the consumer abandoned the case.

Ms. Victor indicated that out of the 184 cases, 73% were mediated successfully and 27% were closed because a successful resolution was not reached. Eighty of these cases were dealer-related and 79% of those were successfully mediated, 21% were closed because a successful resolution could not be reached. Out of the 184 cases, 104 were manufacturer-related and 69% of those were mediated successfully. Thirty-one percent were closed because a successful resolution could not be reached.

As shown on the chart in the memo, as indicated below, there is a two-year comparison. In 2019, there were 383 mediation cases received and 262 were mediated successfully.



Mr. Corcoran commended staff for having a greater than 70% success rate, especially given that the Board's mediation program is 100% voluntary.

President Obando inquired whether there was anything the Board Members could do to better improve the relationship between dealers and manufacturers to increase the success rate. Mr. Corcoran indicated staff would keep that offer in mind for 2022.

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

10. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, General Meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was renamed the Solon C. Soteris Employee Recognition Award. The Board Development Committee recommended this year's Solon C. Soteris Employee Recognition Award be awarded to Staff Services Analyst, Holly Victor, in recognition of her service to the State of California's COVID-19 Contact Tracing Program.

Mr. Corcoran commented that he is appreciative and proud to have had Holly represent the New Motor Vehicle Board on the contact tracing assignment. This award is a small token of appreciation for her service.

Ms. Victor shared that she is thankful for the nomination for this award. She worked as a case investigator, contact tracer and vaccine coordinator during her assignment. She received approximately 10-25 cases per day, and provided information for people during their isolation period as well as resources to families without access to food or needed temporary housing to be able to separate from other members of their household during isolation. Ms. Victor found the experience rewarding as she was able to help people during a scary and unknown time.

Member Doi expressed her appreciation for all staff during this trying time. Member Doi believes Holly deserves to be recognized for her sacrifice and her efforts in contact tracing.

President Obando also reiterated his appreciation for Holly's commitment to the Board and the State of California. It is because of people like Holly and her work that has helped us move forward in the pandemic.

Member Doi moved to adopt the Committee's recommendation. Member Smith Boland seconded the motion. The motion carried unanimously.

11. **ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM - BOARD DEVELOPMENT COMMITTEE**

Tim Corcoran and Danielle Phomsopha provided the members with a memo regarding

the Board education and development for 2022. Ms. Phomsopha noted that at the January 12, 2022, General Meeting there will be education concerning Statement of Incompatible Activities by John T. McGlothlin, the Deputy Attorney General assigned to the Board. Some of the other speakers listed for January may be pushed to later meetings depending on whether their preference is to appear via Zoom or in-person.

Member Doi reiterated that if other Board Members have ideas for Board development, especially the newer Board Members, it would be helpful to share those ideas for consideration.

President Obando shared that he has learned through the pandemic that while there is tremendous value to in-person relationship building, we are also able to expand our wings regarding technology and our virtual capabilities. President Obando thinks this is good opportunity to bring in speakers on a national level if we can do so virtually. The Board may want to continue to meet in a hybrid approach, both in-person and virtually.

Member Doi mentioned that once the Board Members are able to meet in-person, the Board may want to have a meeting at DMV Headquarters in order to view the new space. Mr. Corcoran thought this was a good idea.

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

12. **REPORT ON THE BOARD'S FINANCIAL CONDITION AND RELATED FISCAL MATTERS - FISCAL COMMITTEE**

- a. Quarterly Fiscal Report for the 4th quarter of fiscal year 2020-2021.
- b. Status report concerning the Board's collection of the Arbitration Certification Programs' annual fee.
- c. Discussion and consideration of the Board's proposed budget for the next fiscal year, and whether any dealer/manufacturer fee adjustments are necessary.

The members were provided with a memo from Tim Corcoran, Dawn Kindel, and Suzanne Luke regarding the Board's financial condition and related fiscal matters. Ms. Luke indicated that through the end of Fiscal Year 2020-2021, the Board began with a budget appropriation of \$1.67 million ending with current reserve balance of \$2.6 million. The Board has expended 95% of its appropriated budget for the fourth quarter. The staff does not anticipate the need for fee adjustment.

With regard to the Arbitration Certification (ACP) annual fee collection, Ms. Luke indicated that \$1.5 million was collected and deposited directly into the ACP's account. The ACP fee collection is complete.

Ms. Luke commented that the Board's annual fee collection for manufacturers and distributors began in August. Staff have collected \$715,000 out of approximately \$800,000 from those manufacturers and distributors.

Lastly, the Board's total budget allotment for Fiscal Year 2021/2022 is \$1.78 million.

In response to President Obando's question, Ms. Luke explained that there was a 10% increase in expenditures compared to the fourth quarter for last fiscal year and that was due to personnel services. Mr. Corcoran clarified that the Board upgraded some staff classifications so there has been an increase in personnel costs associated with that. In addition, the Board has seen savings in other areas this year, like contract spending and travel. Next year, staff will be mindful to ensure there isn't an overrun that exceeds this year's cost savings.

President Obando supports the idea of making modifications to the budget to ensure the Board does not go into the red next year.

Member Doi inquired, and Ms. Luke confirmed, that in January the Board will get a final update on the expenditures for the current fiscal year.

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

13. **REPORT ON THE NEW MOTOR VEHICLE BOARD'S RECENT INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memo from Tim Corcoran and Danielle Phomsopha regarding the Board's recent Industry Roundtable on September 8-9, 2021. Ms. Phomsopha noted that 178 people attended Day One and 137 people attended Day Two, in addition to several Board members and staff. A survey was created in order to identify who attended and solicit feedback on the topics presented.

As noted in the memo, the attendees represented attorneys, vendors, automakers, dealers, government regulators and the general public, with most attendees being attorneys, dealers and government regulators.

In regard to the virtual format, a slight majority preferred a virtual event.

General feedback and comments included suggestions for topics/speakers for future Roundtable events including: franchise litigation issues, smog industry emission topics, online vehicle sales and continued ZEV discussion.

Members Stevens and Alvarez expressed their appreciation for staffs' work in putting on the Roundtable event. Member Smith Boland also expressed her appreciation and acknowledge of the excellent speakers.

President Obando was pleased to see attendees that wouldn't typically engage with the Board and believes the virtual environment allows continued outreach of stakeholder development. He also expressed his appreciation to Member Doi for her assistance in hosting Day Two.

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

14. **DISCUSSION REGARDING THE UPCOMING WORKSHOPS ON EQUITY, JUSTICE AND INCLUSION IN THE MOTOR VEHICLE INDUSTRY - AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION**

Mr. Corcoran and Ms. Phomsopha discussed the upcoming Workshops on Equity, Justice and Inclusion in the motor vehicle industry and advised one more manufacturer representative has been added to the agenda for Day One.

Ms. Phomsopha reviewed the following draft agenda of the 2022 Workshop on Equity, Justice and Inclusion in the Motor Vehicle Industry as follows:

Day 1:

- 10:00 a.m. Introduction of Board Members, staff, and attendees by the California New Motor Vehicle Board President
- 10:10 a.m. Keynote address from representative, California State Transportation Agency
- 10:20 a.m. State of the Industry, with Respect to Diversity in the Automotive Franchise Network
- ❖ Representative, National Association of Minority Automobile Dealers (NAMAD)
 - ❖ Representative, Crane Automotive Resources
- 11:00 a.m. Automaker Discussion of Women, Minorities and other Members of Historically Excluded Groups in the Automotive Franchise Network
- ❖ Representative, Ford Motor Company
 - ❖ Representative, General Motors, LLC
 - ❖ Representative, Nissan North America, Inc.
 - ❖ Representative, Stellantis
 - ❖ Representative, Toyota Motor Sales USA Inc.
- 11:40 a.m. Q & A Session moderated by New Motor Vehicle Board President
All presenters

Day 2:

- 10:00 a.m. Introduction of Board Members, staff, and attendees by the California New Motor Vehicle Board President
- 10:15 a.m. Welcoming remarks from Representative California State Transportation Agency
- 10:30 a.m. Presentations on Equity and EVs

- ❖ Representative, Greenlining Institute
- ❖ Representative, Access Clean California
- ❖ Representative, National Association of Minority Automobile Dealers (NAMAD)
- ❖ Representative, California New Car Dealers Association (CNCD)

11:40 a.m. Q & A Session moderated by New Motor Vehicle Board President
All presenters

President Obando indicated he is looking at the calendar for scheduling and anticipates as early January or February timeframe to hold the event. Staffs' workload calendar will be utilized to determine a final date.

Mr. Corcoran suggested that this workshop may be ripe for being the Board's next industry roundtable event where the Board may be able to garner a larger audience size and bring more people into this important discussion.

Member Alvarez agreed with this idea. President Obando wanted to continue this discussion at the next Board Meeting.

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

15. **CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO ELIMINATE REFERENCES TO REGISTERED MAIL BY REPEALING SECTION 550.20 (USE OF CERTIFIED MAIL IN LIEU OF REGISTERED MAIL) AND AMENDING SECTION 564 (DECISION) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning regulatory amendments. Ms. Parker remarked that this is for cleanup as there is no longer any statutory authority that requires the Board to send anything via registered mail. Section 550.20 needs to be repealed because we no longer need to have the regulation that allows us to send via certified mail in lieu of registered mail. The amendment to Section 564 also just eliminates the reference to registered mail.

Member Doi moved to adopt the proposed regulations. Member Stevens seconded the motion. The motion carried unanimously.

President Obando 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 a future meeting. If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

16. **DISCUSSION CONCERNING ENACTED AND PENDING LEGISLATION - LEGISLATIVE COMMITTEE**

a. Enacted Legislation of Special Interest:

- (1) Assembly Bill 361 (Assembly Member Rivas) - Open meetings: state and local agencies: teleconferences
- (2) Assembly Bill 1291 (Assembly Member Frazier) - State bodies: open meetings

b. Pending Legislation of Special Interest:

- (1) Assembly Bill 29 (Assembly Member Cooper) - State bodies: meetings
- (2) Assembly Bill 885 (Assembly Member Quirk) - Bagley-Keene Open Meeting Act: teleconferencing

c. Pending Legislation of General Interest:

- (1) Assembly Bill 1211 (Assembly Member Muratsuchi) - Electric mobility manufacturers
- (2) Senate Bill 361 (Senator Umberg) - Electronic transactions: motor vehicle finance

d. Enacted Legislation of General Interest:

- (1) Assembly Bill 473 (Assembly Member Chau) - California Public Records Act
- (2) Senate Bill 339 (Senator Wiener) - Vehicles: road usage charge pilot program
- (3) Senate Bill 500 (Senator Min) - Autonomous Vehicles: zero emissions

e. Pending Federal Legislation of General Interest:

- (1) United States Senate Bill 2118 (Senator Wyden) - Clean Energy for America Act

The members were provided with a memorandum from Tim Corcoran and Danielle Phomsopha concerning pending legislation. Ms. Phomsopha mentioned the bills of special interest to the Board that have been enacted as listed above. Ms. Phomsopha referred the Board Members to the memorandum for other enacted bills of general interest. She also mentioned that the staff will continue to track the other bills listed since we are in the middle of a two-year legislative session. The legislature is in recess until January 3, 2022.

President Obando indicated that the main bill of impact to the Board is AB 361 relating to virtual meetings. It is likely that further changes regarding in-person meetings may be forthcoming and we will keep the Board Members updated in this regard.

Member Doi inquired as to whether the authorization of remote meetings can be done by executive order or only legislatively. Ms. Phomsopha confirmed that it can be done by executive order and it was done by executive order prior to this statute being amended.

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

17. **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 that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Corcoran provided a wrap up of 2021:

- The Board transitioned to holding virtual merits hearings. No significant issues occurred, and the Board staff fine-tuned anything that needed to be addressed. The virtual merits hearing format allowed parties and witnesses additional flexibility and efficiencies not always provided for in an in-person format.
- The Board has prevailed substantively on four petitions for writ of mandate this year, with one returned for changes to one finding in the Board's decision.
- The Board set a record by holding 12 public meetings this year, with the majority of those being committee meetings. This allowed for more discussion and engagement of Board Members as well as provided transparency to the public. All meetings are recorded and posted online.

- Attendance of the Board's virtual Industry Roundtable also set a record. Mr. Corcoran shared he received many inquiries from legislators who wanted to view the event indicating the popularity of the event discussing electric vehicles.
- This is also the first full year of distributing all meeting materials electronically to Board Members. This has resulted in savings on costs for paper and equipment and allows for easier transparency online as well. This transition was a result of Board Member recommendation.
- Mr. Corcoran expressed congratulations to Member Doi on her reappointment and to new Members Stevens and Fitzpatrick.
- Mr. Corcoran also acknowledged the completion of staff retention and succession planning as well as the addition of securing additional support to complement our organizational structure.
- Mr. Corcoran will be providing the Board Members an expansion on the Board's achievements in preparing for his review. He also indicated his appreciation for the Board Member's leadership and support in allowing the staff to seize opportunities to grow, transform and be more efficient.

Member of the public, Lisa Gibson, shared that she participated in at least one of the virtual merits hearings and felt it was done professionally and applauded staff in how it was conducted.

Ms. Parker reported that there is no update to the judicial review portion of the report. The appeal is pending in the *Barber* case.

Ms. Parker provided some year-end statistics, including the following: There have been 35 protests have been filed this year. In comparison, 60 protests were filed in 2020. The average is approximately 45-50. Although the number of protests filed is on the low side this year, the workload has still been tremendous with 31 virtual merits hearing days.

In regard to notices of termination, there have only been 22 with 13 of those being for recreational vehicles leaving only nine notices dealing with cars or other types of vehicles. Ms. Parker indicated that this is also a lot lower than normal.

Ms. Parker introduced the Board's new legal assistant, Garrett Porter. Mr. Porter indicated he is enjoying working with Board staff so far. [Subsequent to the meeting, Mr. Porter resigned.]

Ms. Phomsopha indicated that for case management, two protests were dismissed and the merits hearing in the consolidated establishment protests involving *Airport Marina Ford* and *Central Ford* have been assigned to Judge Pipkin. Counsel will have a conference call on December 20 to determine if they are going forward with the merits hearing on January 18, 2022. In addition, another potential merits hearing is set for February 21, 2022.

Ms. Doi expressed her appreciation for Mr. Corcoran's highlights of the Board and staffs' accomplishments for the year.

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

18. **SELECTION OF BOARD MEETING DATES FOR 2022**

The members were provided with a memorandum from Tim Corcoran concerning Board meeting dates for 2022. The members went off the record for this discussion. President Obando indicated that the following meeting dates have been selected:

- January 12, 2022, General Meeting via Zoom and teleconference
- March 30, 2022, General Meeting from 10:30 a.m. to 2:30 p.m. in Sacramento
- June 15, 2022, General Meeting from 10:30 a.m. to 2:30 p.m. in Glendale

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

No additional public comment was presented.

20. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

President Obando noted that Judge Skrocki, the assigned Administrative Law Judge that was involved in this matter, was observing the Board Meeting but dropped off the meeting prior to this Agenda Item and is no longer observing the meeting.

President Obando noted for the record that Vice President Kassakhian joined the meeting.

Mr. Corcoran confirmed a quorum of the Public Members were present.

President Obando reminded the Dealer Members in attendance, that they may not participate in, hear, comment or advise other members upon or decide Agenda Items 20-21.

President Obando read the following statement “comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board.” Furthermore, he indicated that since this is an adjudicative matter as described in Government Code section 11125.7(e) and (f), members of the public may not comment on this matter.

PUTNAM AUTOMOTIVE, INC., dba PUTNAM SUBARU v. SUBARU OF AMERICA, INC.
Protest No. PR-2542-17

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq. and Robert A. Mayville, Jr., Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Lisa M. Gibson, Esq. of Nelson Mullins Riley & Scarborough LLP represented Respondent.

21. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CONSIDERATION OF PROPOSED ORDER

PUTNAM AUTOMOTIVE, INC., dba PUTNAM SUBARU v. SUBARU OF AMERICA, INC.

Protest No. PR-2542-17

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protest, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Member Doi moved to adopt the Administrative Law Judge's Proposed Order. Member Stevens seconded the motion. The motion carried unanimously.

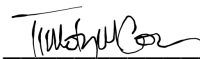
22. **OPEN SESSION**

The Public Members returned to Open Session. Ms. Parker announced the decision in Agenda Item 21.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 12:38 p.m.

Submitted by



TIMOTHY M. CORCORAN
Executive Director

APPROVED: Bismarck Obando

Bismarck Obando
President
New Motor Vehicle Board