

3. Toyota of El Cajon and Rose Imports filed protests with the Board on October 16 and October 19, 1980, respectively.

4. On October 24, 1980, White Toyota filed with the Board a Notice of Appearance as an Interested Party.

5. A Prehearing Conference was held before Sam W. Jennings, Chief Administrative Law Judge of the Board on October 28, 1980, and a hearing was held on November 10, 11, 18, 19, and 20 before Anthony M. Skrocki, Administrative Law Judge of the Board.

6. Respondent, TMD, was represented by V. Barlow Goff of McDonough, Holland, and Allen. Protestants, Toyota of El Cajon and Rose Imports were represented by Kenneth J. Murphy, Jr., of Herlihy, Herlihy, and Murphy. White Toyota was represented as an interested party by Sidney I. Pilot of Pilot and Spar.

ISSUES PRESENTED

7. Protestants contend there is good cause for not allowing White Toyota to relocate for the following reasons:

- a) The Protestants' investments are permanent, and will be adversely affected by the relocation;
- b) There will be an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area;
- c) The relocation will be injurious to the public welfare;

- d) The current franchisees in the relevant market area are providing adequate competition and convenient consumer care for the owners of Toyota motor vehicles in the market area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel;
- e) The relocation would not increase competition and therefore would not be in the public interest.

FACTS RELATING TO PERMANENCY
OF INVESTMENT [§3063 (1)]

Toyota of El Cajon

8. George Trenfel has been a Toyota dealer since 1965. He is president and sole stockholder of Toyota of El Cajon and is active in the operation of the dealership. His son, William Trenfel, is also active in the business, presently as general manager and vice-president.

9. George Trenfel moved his Toyota dealership to El Cajon in 1966 and relocated it to its present location on an auto row in 1967. Toyota of El Cajon is a single-line dealership.

10. Toyota of El Cajon's facilities are located on three separate parcels of property. These parcels are presently owned by Mr. and Mrs. George Trenfel and are leased to the dealership for two years with options to renew for an additional three years.^{3/}

11. The parcel formerly owned by one Ballentine was purchased by the Trenfels on January 25, 1979, for \$600,000. The Ballentine property has situated on it the main new car showroom, service department, body shop, and paint shop as well as a new car get-ready facility.

12. The Townsend property was purchased by the Trenfels in December of 1978 at a cost of \$197,500. The Townsend property has situated on it the used car office and new and used car storage.

13. The third parcel was formerly owned by one Marrero and is referred to as the M & M property. The M & M property was purchased by the Trenfels in August of 1977, at a cost of \$225,000. This property has situated on it the sales office and additional mechanical and detail space as well as a partly completed structure that is planned to be used for a mechanical and service department.

14. The cost of recent improvements to the dealership property was approximately \$70,000.

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2. The parcels were purchased by Mr. and Mrs. Trenfel at various times and are identified by reference to the names of the prior owners.

Rose Imports

15. John Rose has been a Toyota dealer since 1957 and was the first Toyota dealer in the United States. He is the sole shareholder of the stock of Rose Imports.

16. John Rose is active in the operation of Rose Imports and is president of the corporation and general manager of the dealership. Rose Imports has been at its present location since 1946, and is a single-line dealership.

17. Rose Imports is located on about 8 1/2 acres. John Rose and his wife own 4 acres and lease the land to Rose Imports. The remainder of the land is leased from two separate parties. One lease is with Alessio Leasing Corporation with about 9 years remaining of a ten-year term with two five-year options to renew. The second lease is from Sunset Pools, on a sublease for a seven-year term with almost the full seven years remaining.

18. Rose Imports' facilities consist of nine buildings. These include two showrooms, office, parts and service facilities, and a body shop.

19. The land on which the dealership is located is valued at approximately \$750,000 to \$850,000 an acre.

20. Rose Imports has upgraded its facility at the suggestions of TMD. Rose Imports recently acquired additional frontage property at TMD's requests in order to meet TMD's standards. Approximately \$200,000 was expended by Rose Imports to remodel the newly acquired frontage property.

21. The buildings on the property are insured for approximately \$400,000.

White Toyota

22. White Toyota first made a determination to request a relocation to Lemon Grove about three years ago. At that time, attempts to obtain a lease of suitable property in Lemon Grove were unsuccessful.

23. Lee White and his wife currently have an option to purchase property at 6826 Federal Boulevard, Lemon Grove, California. The purchase price for the property is 1.5 million dollars.

24. In addition to the land acquisition costs, White Toyota anticipates spending approximately \$600,000 in order to get the dealership operational at the proposed new location.

ABILITY TO PROTESTANTS TO REALIZE
A PROFIT ON THEIR INVESTMENT

25. There are currently Volkswagen dealerships in El Cajon and in Lemon Grove. Both are apparently profitable.

26. Approximately 85% of the business of the Lemon Grove Volkswagen dealership comes from outside of the El Cajon Valley.

27. There are currently Ford dealerships in Lemon Grove, El Cajon, and La Mesa.

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28. During the first ten months of 1980, the wholesale supply of Toyota vehicles to the six San Diego metropolitan area dealers^{3/} increased by 1,246 units. This represents a 17.5% increase over the first ten months of 1979.

29. TMD expects that there will be no reduction in the availability of Toyota vehicles to the six San Diego metropolitan area dealers in 1981.

30. In a metropolitan area, each dealer is assigned a geographical territory which is called its primary market area (PMA)^{4/}.

31. There is normally a large amount of cross-selling^{5/} within a metropolitan market area. In a metropolitan area it is normal for more than 40% of an individual dealer's sales to be made to customers residing outside of the dealer's PMA.

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3. The San Diego metropolitan area Toyota dealers consist of the following six dealers: Toyota of El Cajon, El Cajon; Rose Imports, San Diego; White Toyota, San Diego; Douglas Toyota, Pacific Beach; Frank Motors, National City; Kearny Mesa Toyota, Kearny Mesa.

4. Primary market areas are geographical areas assigned to individual dealers within the multiple point market. PMAs are used to distribute a multiple point's total planning potential among each of its dealers. PMA boundaries are delineated according to traffic and shopping patterns, natural geographical barriers, and cross-sell data for existing Toyota dealerships.

5. Cross-selling is when a dealer sells a vehicle to a customer located outside of his own PMA.

32. The chart below is a comparison of the profitability of the Protestants, White Toyota, the San Diego metropolitan area dealers, and the Los Angeles region dealers. The Los Angeles region includes all of southern California.

	No. of vehicles sold in first 10 months of 1980	Average gross profit per new vehicle-retail in first 9 months of 1980	Net pre-tax profit in first 9 months of 1980 (Entire dealership operation)
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Toyota of San Diego Metropolitan Area Toyota Dealers	757	\$1,025	\$507,358
Los Angeles Region	-----	779*	353,568*
White Toyota	1049	933	530,000
San Diego Metropolitan Area Toyota Dealers	7168	891*	418,000*
Los Angeles Region	-----	779*	353,568*
Los Angeles Region	-----	779*	353,568*

*Average per dealer

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FACTS RELATING TO THE EFFECT ON THE RETAIL
MOTOR VEHICLE BUSINESS AND THE CONSUMING
PUBLIC IN THE RELEVANT MARKET AREA [§3063 (2)]

33. In 1978, the Market Representation Department of Toyota Motor Sales, U.S.A., (TMS),^{6/} conducted a San Diego Multiple Point Study (market study) which analyzed the San Diego market.

34. One factor considered by the TMD Regional Manager, in recommending the approval of the move of White Toyota to Lemon Grove was the projected growth rate in the Lemon Grove area as indicated in the market study.

35. The Lemon Grove market area includes the Spring Valley area. According to the population-income charts and actual census tract projections, this area has a rapid growth characteristic both in income and in population.

36. In its 1978 market study, TMS had designated the Lemon Grove/Spring Valley area as a monitored growth area. This designation meant that, on the next evaluation of the market area, scheduled for 1982, consideration should be given to establishing another dealership in addition to the existing San Diego metropolitan area dealers.

37. The proposal to relocate White Toyota to Lemon Grove was initiated by White Toyota and was not the result of a determination by TMD to establish an additional dealership in the San Diego area.

6. TMS is the parent company of TMD and imports Toyota vehicles into the United States.

38. In 1976, the El Cajon PMA had a population of 225,136. The most current information available to TMD indicates that the El Cajon PMA has a population of 274,606.

39. The termination date of the White Toyota Sales and Service Agreement with TMD is January of 1981. The agreement has run for a six year term and discussions have been held over the last six to eight months concerning a renewal of the franchise agreement.

40. TMD indicated to White Toyota that TMD would not renew White Toyota's franchise at its current location unless the facilities were improved and enlarged. However, this is not possible at its present location due to lack of available land.

FACTS RELATING TO WHETHER THE RELOCATION
WOULD BE INJURIOUS TO PUBLIC WELFARE [§3063 (3)]

41. White Toyota is required to obtain an annual variance to the residential zoning in which it is currently located. The variance is necessary in order to operate the service department. The increase in business of White Toyota's service department is causing an increase in complaints from the neighbors due to the increase in the traffic flow. It is unlikely that the city will grant further renewals of the variance.

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42. Lee White is also owner of Continental Imports (Subaru) presently in operation in San Diego. If White Toyota moves to the Lemon Grove location, Lee White plans on relocating Continental Imports to the El Cajon Boulevard premises presently being used by White Toyota. Lee White is hopeful that the city will permit the operation of Continental Imports at the El Cajon Boulevard location without need for an annual zoning variance. This is because the Subaru operation will be a small low volume operation selling approximately 35 to 40 Subarus per month with a proportionate decrease in service volume compared to White Toyota.

43. In order to obtain the approval of the city of San Diego for the Subaru operation, Continental Imports will be required to landscape and fence the property at a cost of approximately \$45,000 and will lose approximately 25% of the total land space in attempting to achieve a park-like appearance. It will be known as Continental Subaru when it relocates.

44. The extent of commercial development in the Lemon Grove area has discouraged location or relocation of businesses into Lemon Grove in 1979 and 1980. The commercial area in the Lemon Grove community is approximately 98% developed or committed. The property to which White Toyota proposes to move is commercially zoned and would permit the operation of the dealership.

45. Lee White has been a Toyota dealer in San Diego since March of 1970. White Toyota does not utilize a "turn over"^{7/} system in selling cars because of a belief that it tends to cause confusion in the customer's mind and results in subsequent problems for the dealer.

46. Both Toyota of El Cajon and Rose Imports utilize a "turn over" system.

47. The relocation of White Toyota into the city of Lemon Grove would result in a significant increase in sale tax revenue to the city. The relocation would also be beneficial to other businesses that support automobile dealerships resulting in additional tax revenue and job creation. This is important to the city of Lemon Grove since it is approximately 98% developed and anticipates a slow growth rate for the next five years.

FACTS RELATING TO WHETHER TOYOTA FRANCHISEES
IN THE RELEVANT MARKET AREA ARE PROVIDING
ADEQUATE COMPETITION AND CONVENIENT CONSUMER
CARE FOR THE OWNERS OF TOYOTA VEHICLES IN
THE MARKET AREA INCLUDING VEHICLE SALES AND
SERVICE FACILITIES, EQUIPMENT, SUPPLY OF VEHICLE
PARTS, AND QUALIFIED SERVICE PERSONNEL [§3063 (4)]

48. White Toyota is required to turn away ten to fifteen service customers a day who cannot be accommodated because of its limited service capabilities.

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7. In a "turn over" system, the consumer is initially met by a "greeter" or a "liner" and then eventually is turned over to a "closer". (RT 565)

49. The current White Toyota facility has nineteen service stalls. Eight of these are used for service, seven are used for wholesale parts storage and the remainder are used for new and used car delivery and sale preparation, wash rack, and front end work.

50. White Toyota has very limited customer parking space which causes congestion and tends to discourage service business. A public alley must be used in order to gain access to the service department at White Toyota.

51. White Toyota's current facility, located on three-quarters of an acre, is 55 years old, and is considered to be outdated. A new facility will be built at the proposed location.

52. The proposed location has three acres of land which will provide sufficient capacity for all departments of White Toyota's business, including new and used vehicle sales and storage, service department, parts department, and service customer parking. The proposed location is adjacent to a freeway with high visibility and easy access for the public.

53. Construction plans for the new White Toyota facility include twenty-seven service stalls.

54. White Toyota's current facility meets 53% of the standards established by TMD.

55. Toyota of El Cajon's facilities come within 98% of TMD's standards.

56. The facilities of Rose Imports meet or exceed all of the standards established by TMD.

57. There is a distinct physical separation between the El Cajon Valley and the Lemon Grove/Spring Valley area to the southwest.

58. The following figures indicate the driving distances and times from the points indicated:

	<u>Miles</u>	<u>Time</u>
Present White Toyota to Toyota of El Cajon	11.9	14 min. 50 secs.
Proposed White Toyota to Toyota of El Cajon	7.0	11 min. 5 secs.
Present White Toyota to Rose Imports	3.9	6 min. 40 secs.
Proposed White Toyota to Rose Imports	5.8	10 min. 50 secs.

59. The proposed new location for White Toyota is within its old PMA Boundaries.

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FACTS RELATING TO WHETHER THE RELOCATION
WILL INCREASE COMPETITION AND BE IN
THE PUBLIC INTEREST [§3063 (5)]

60. The figures below indicate the number of small cars registered during 1980 (through August) in the San Diego metropolitan market area:

Toyota	4,218
General Motors	3,824
Ford	3,644
Honda	3,365
Datsun	3,354
Volkswagen	1,682
Mazda	1,430
Chrysler	862
AMC	215

61. Through June 1980, Toyota registrations in the PMA assigned to Toyota of El Cajon were below the San Diego metropolitan area average in penetration for cars and trucks.

62. Through June 1980, Toyota registrations in the PMA assigned to Rose Imports were above the San Diego metropolitan area average in penetration for cars and trucks.

63. The size of the PMA assigned to a dealer does not affect its allocation of Toyota vehicles. Allocations are determined based upon a dealer's sales performance and inventory as well as availability of vehicles for allocation.

64. In addition to the normal dealer allocations, TMD regional offices have available to them vehicles which are described as market representation units. These units are intended to furnish additional inventory to a dealer who undertakes a major upgrading or improvement. Improvements which have qualified for market representation units include: a major improvement of an existing facility, the construction of a new facility, and a major change in the management structure of the dealership.

65. Toyota of El Cajon and Rose Imports have both received market representation units within the last two years.

66. Assuming White Toyota relocates, it is anticipated that the dealership would qualify for market representation units in addition to its allocation. In the past, such additional allocations have amounted to as many as 100 vehicles a month for a period of three months.

67. The market representation units are not taken out of the region's normal allocation.

68. The establishment of White Toyota at the proposed location would place White Toyota, Toyota of El Cajon, and Rose Imports all within approximately ten minutes driving time of each other.

69. The present White Toyota location is considered to be in a declining area of San Diego. The area is also considered to have a limited potential for growth. The proposed location is in a market area which continues to grow.

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DETERMINATION OF ISSUES

Protestants have failed to establish that there is good cause for not relocating White Toyota.

- (a) Protestants established that their investments are permanent, but failed to establish that their investments will be adversely effected by the relocation.
- (b) Protestants failed to establish that the relocation will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area.
- (c) Protestants failed to establish that the relocation will be injurious to the public welfare.
- (d) Protestants failed to establish that there is adequate competition and convenient consumer care for the owners of Toyota motor vehicles in the market area including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.

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(e) Protestants failed to establish that the relocation would not increase competition and failed to establish that the relocation would not be in the public interest.

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The following proposed decision is respectfully submitted:

The protests are overruled. TMD is permitted to relocate

White Toyota.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing had before me on the above dates at Sacramento, California, and recommend its adoption as the decision of the New Motor Vehicle Board.

Dated: *DECEMBER 16, 1980*

Anthony M. Skrocki

ANTHONY M. SKROCKI
Administrative Law Judge
New Motor Vehicle Board