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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

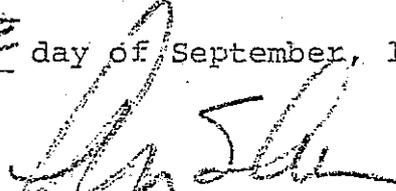
In the Matter of the Protest of)	
LEN SHERIDAN, INC., dba LEN)	
SHERIDAN TOYOTA, a California)	Protest No. PR-371-81
corporation,)	
)	
Protestant,)	
)	
vs.)	
)	
TOYOTA MOTOR DISTRIBUTORS, INC.,)	
)	
Respondent.)	
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CRENSHAW TOYOTA, INC., dba)	
CRENSHAW TOYOTA,)	
)	
and)	
)	
WESTSIDE VOLKSWAGEN, INC., dba)	
MARINA VOLKSWAGEN,)	
)	
Interested Individual.)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the New Motor Vehicle Board as its Decision in the above-entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED this 21st day of September, 1982.


~~E. JAMES~~ ALLAN E. LONA
President ATTORNEY MEMBER
New Motor Vehicle Board

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_____)

PROTEST NO. PR-371-81

PROPOSED DECISION

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PROCEDURAL BACKGROUND

1. By letter dated December 15, 1981, Toyota Motor Distributors, Inc., (Toyota) gave notice to Len Sheridan, Inc., (Sheridan) of Toyota's intention to relocate Crenshaw Toyota, Inc., (Crenshaw) from its present location at 6530 Crenshaw Boulevard, Los Angeles, California to 4636 Lincoln Boulevard, Marina Del Ray, California.

2. On December 31, 1981, Sheridan filed a protest with the New Motor Vehicle Board (Board) pursuant to Vehicle Code Section 3062.^{1/}

3. On January 15, 1982, Westside Volkswagen, Inc., (Westside) dba Marina Volkswagen (Marina) and Crenshaw were granted status as interested parties pursuant to Vehicle Code Section 3066(a).

4. A hearing was held before Marilyn Wong, Administrative Law Judge for the Board. The hearing was conducted on the following dates: March 8th, 9th, 10th, 11th,

^{1/} All references are to the California Vehicle Code unless otherwise indicated.

12th, 25th, and 26th; April 14th, 15th, 16th, 19th, 20th, 21st, 22nd, and 23rd; May 17th, 18th, 19th, 20th, 21st, 26th, and 29th; June 5th, 9th, 10th, and 11th.

5. Sheridan was represented by George E. Leaver of the law firm of Manning, Leaver, Bruder & Berberich, and by Houston N. Tuel of the law firm of Coder & Tuel. Toyota was represented by Margaret S. Henry and William A. Plourde, Jr.

6. Marina and Crenshaw were represented by A. Albert Spar and Sidney I. Pilot of the law firm of Pilot & Spar.

7. A protest against Toyota Motor Sales, U.S.A., Inc., was withdrawn by stipulation of the parties.

ISSUES PRESENTED

8. Protestant contends that there is good cause for not relocating the franchise for the following reasons:

- a. The protestant's investments are permanent and will be adversely affected by the relocation of the franchise [§ 3063(1)];
- b. There will be an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area [§ 3063(2)];

- c. The relocation of the franchise will be injurious to the public welfare [§ 3063(3)];
- d. The Toyota franchisees in the relevant market area are providing adequate competition and convenient consumer care for the Toyota vehicles in the market area, including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel [§ 3063(4)]; and
- e. The relocation would not increase competition and would not be in the public interest [§ 3063(5)].

9. Protestant contends that the letter of December 15, 1981, from Toyota advising protestant that Crenshaw intended to relocate its place of business did not accurately characterize the nature of the proposed action. Protestant contends that Toyota is establishing an additional franchise at 4636 Lincoln Boulevard, Marina Del Ray, and that Crenshaw is not relocating its place of business.

FINDINGS OF FACT

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

10. Leonard M. Sheridan individually owns 75% of the stock of Sheridan. The remaining 25% interest in the

corporation is owned by his son Daniel Sheridan. Leonard Sheridan is the president of the corporation. Daniel Sheridan is vice president of the corporation and general manager of the dealership.

11. Sheridan acquired the Toyota franchise in 1965.

12. Sheridan is located at 1801 Santa Monica Boulevard, Santa Monica.

13. The land upon which Sheridan is located was purchased by Len Sheridan in 1956 and has a present market value of 5.5 to 6 million dollars.

14. Leonard Sheridan and Suzanne Sheridan, his wife, presently own the land on which the dealership is operated. Mr. and Mrs. Sheridan lease the land to the corporation for \$18,000 per month.

15. Sheridan owns the buildings on the land in which the dealership operates. The buildings are presently valued at between \$700,000 to \$750,000.

16. Sheridan is planning to expand its service facilities. Leonard Sheridan has purchased an additional 7500 square feet of land adjoining the dealership for the sum of

\$351,000. The plans to expand the facilities include construction of six additional service stalls, additional service writers' offices, and additional parts storage.

17. Sheridan has expended the following sums of money over the past three years for equipment and improvements at the dealership:

Hydraulic Hoist	\$ 70,000
Analytical Scope	40,000
Alignment Equipment	15,000 to 20,000
Compressors	5,000 to 10,000
Lubrication Equipment	10,000 to 12,000
Remodeling Sales Showroom	100,000
Remodeling Parts Storage Area	90,000
Installation of Computer System	125,000
Total	\$455,000 to 497,000

FACTS RELATING TO THE PERMANENCY OF THE INVESTMENT OF
LEONARD HORNREICH

18. There was a Toyota franchise in operation for several years at the Crenshaw site prior to the acquisition of Crenshaw by Leonard Hornreich (Hornreich) in May 1980. The prior Toyota dealership was called Hyde Park Toyota.

19. Hornreich, the president and sole shareholder of Crenshaw, has entered into an agreement dated November 9, 1981, with Westside to sell the inventory and the fixed assets of Crenshaw to Westside.

20. Russell Hand (Hand) is the president of Westside and owns 50% of the stock in Westside. Ted Factor (Factor) is the vice president of Westside and owns 50% of the stock in Westside. Factor does not actively participate in the operation or management of Westside.

21. The buy/sell agreement between Crenshaw and Westside sets the price of Crenshaw's inventory at up to \$150,000. The agreement sets the price of Crenshaw's fixed assets at \$71,000. Crenshaw's fixed assets were defined to include shop tools, equipment, furniture, fixtures, storage facilities, signs and leasehold improvements.

22. Hornreich intends to purchase 10% of the stock of Westside and will become the general manager of Marina.

23. Hand, Hornreich, and Toyota have proposed that should the protest be overruled, the franchise will be held by Westside and operated through Marina as a dual Toyota and Volkswagen dealership.

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

24. The number of Toyota dealerships in the relevant market area will not change if Crenshaw is relocated to the proposed location.

25. The following represents Toyota new car registrations as a percent of total import registrations in the areas indicated from January 1981 to September 1981:

<u>Primary Market Area^{2/}</u>	<u>Toyota % of Total Import Registrations</u>
Sheridan Present	19.17
Sheridan Proposed	19.24
Marina Proposed	22.16
Los Angeles Region Average ^{3/}	28

^{2/} A primary market area is a Toyota designation of a geographical area surrounding a particular Toyota dealership for which the dealer is accountable to Toyota for providing adequate facilities and services to the people residing therein.

^{3/} The Los Angeles Region is a Toyota designation of a geographical area encompassing the southern half of California which includes 80 Toyota dealerships.

26. The proposed site is the current location of Marina at 4636 Lincoln Avenue. Lincoln Avenue is the major north-south coastal road between Santa Monica and the South Bay. The proposed site is less than 1/4 mile from the access road leading to the Marina Freeway, which adjoins the San Diego Freeway.

27. The proposed facility and land exceed all of Toyota's minimum requirements.

28. The Marina Del Rey area is in proximity to major commercial and residential expansion projects which will result in increased population and traffic counts in the future.

29. The following represents the population for the areas indicated as of the 1980 census count:

<u>Primary Market Area</u>	<u>Population</u>
Sheridan Present	311,690
Sheridan Proposed	225,877
Marina Proposed	137, 750

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FACTS RELATING TO WHETHER IT IS INJURIOUS TO THE PUBLIC
WELFARE FOR THE FRANCHISE TO BE RELOCATED
[\$ 3063(3)]

30. Crenshaw does less service business in terms of the number of repair orders and in terms of service dollar sales than any other dealership in the L.A. Metro area.^{4/}

31. Crenshaw completed approximately 4,605 warranty repair orders and customer paid repair orders during the calendar year 1981.

32. The number of dealerships in the relevant market area will not change if Crenshaw is relocated to the proposed location.

33. In the event that Crenshaw is relocated, Crenshaw will be open one evening each week in addition to its normal operating hours. Crenshaw will operate a courtesy bus to shuttle customers to work and to their homes while their vehicles are being serviced.

^{4/} The L.A. Metro area refers to a geographical area designated by Toyota consisting of the primary market areas of seven dealerships located primarily on the west side of the City of Los Angeles, but including the downtown area.

34. Crenshaw achieved a lower average gross profit per new vehicle sold at retail during 1981 and 1982 than any other Toyota dealer in the L.A. Metro area.

35. The following chart represents the average gross profit per new vehicle sold at retail for Toyota dealers in the L.A. Metro for the years indicated:

<u>Average Gross Profit Per New Vehicle Sold Retail</u>		
<u>Dealership</u>	<u>1980</u>	<u>1981</u>
Sheridan	\$783	\$835
Crenshaw	676*	750
A ^{5/}	745	984
B	814	989
C	721	936
D	786	776

*June 1980 - December 1980

36. Only 6.6% of Crenshaw's total sales were registered in its own primary market area from June 1981 to December 1981.

^{5/} The letters A through D represent other Toyota dealers in the L.A. Metro area.

37. During the calendar year 1980, 16.4% of the registrations of new Toyotas in the Crenshaw-primary market area were attributed to sales made by Crenshaw. During the calendar year 1981, 19.8% of the new Toyotas registered in the Crenshaw primary market area were attributed to sales made by Crenshaw.

38. Market studies conducted by Toyota have led to Toyota's conclusion that the Crenshaw location at 6530 Crenshaw Boulevard, Los Angeles, is not a desirable location for a Toyota dealership.

39. Toyota considers the Crenshaw facility and location to be inadequate. The facility does not meet Toyota's minimum standards. The facility is located in a deteriorating area which is economically depressed. The area is declining in population and has a high crime rate.

40. In the event the relocation is permitted, the Toyota dealers in proximity to Crenshaw will service the vehicles currently being serviced by Crenshaw.

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41. The following chart represents the straight line distance from the present Crenshaw location to the surrounding dealers:

<u>Dealer</u>	<u>Straight Line Distance From Present Location Miles</u>
Inglewood Toyota	2.17
Mike Miller Toyota	4.22
Toyota Central	4.88

FACTS RELATING TO WHETHER THE FRANCHISEES OF THE SAME LINE-
MAKE IN THE RELEVANT MARKET AREA ARE PROVIDING ADEQUATE
COMPETITION AND CONVENIENT CONSUMER CARE FOR TOYOTA VEHICLES
[\$ 3063(4)]

42. Sheridan has a total of fifteen service stalls. Twelve stalls are utilized for service customers and three stalls are utilized for storage and dealer preparation of new vehicles. Sheridan has fifteen vehicle lifts including an alignment rack.

43. Sheridan has sixty-seven employees of which twenty-one are employed as mechanics with varying skill levels.

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44. The following chart represents Toyota's facility and space requirements for the dealerships indicated:

<u>Dealership</u>	<u>Vehicle Sales Planning Potential^{6/}</u>	<u>Service Area (Sq. Ft.)</u>	<u># of Service Stalls</u>	<u>Parts Area (Sq. Ft.)</u>	<u>Total Land/Bldg. (Sq. Ft.)</u>
Sheridan					
(Present)	1,984	10,340	32	6,933	189,000
(Proposed)	1,686	9,107	28	5,893	170,000
(Actual)		9,810	15	3,860	94,245
Crenshaw					
(Present)	444	2,332	6	1,687	56,000
(Proposed)	720	3,873	11	2,427	82,000
(Actual)		4,989	15	4,485	46,055
Mike Miller					
(Present)	1,302	6,952	21	4,507	136,000
(Proposed)	1,246	6,336	19	4,160	126,000
(Actual)		6,360	15	4,600	49,842
Inglewood					
(Present)	906	4,796	14	3,120	100,000
(Proposed)	983	5,412	16	3,467	110,000
(Actual)		5,960	15	756	93,000
Hollywood					
(Present)	2,108	(No evidence was presented)			
(Proposed)	2,039				
(Actual)	--	--	--	--	--
Webber					
(Present)	1,696	--	--	--	--
(Proposed)	1,668	--	--	--	--
(Actual)	--	--	--	--	--
Central					
(Present)	1,377	--	--	--	--
(Proposed)	1,452	--	--	--	--
(Actual)	--	--	--	--	--
Canfield					
(Present)	842	--	--	--	--
(Proposed)	838	--	--	--	--
(Actual)	--	--	--	--	--

^{6/} Planning potential is a standard used by Toyota to determine the adequacy of a dealer's facilities and the number of technician's required. Planning potentials are the result of a formula which considers dealer's sales, import registrations, and small car registrations in distributing the total planning potential among the dealers in the market.

45. Leonard Sheridan recently purchased an additional 7,500 square feet of land at a cost of \$351,000 and plans to build six additional service stalls on the additional property.

46. Leonard Sheridan purchased the additional property with the intent of expanding the Sheridan facility and to enhance the value of the property he already owns. Leonard Sheridan's purchase of the additional property was the result of his own initiative and not an action prompted by Toyota.

47. The following represents Sheridan's customer paid and warranty repair orders (excluding internal repair orders and pre-delivery service repair orders) as compared to the customer paid and warranty repair orders by the other Toyota dealerships in the Los Angeles Metro area:

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>Total</u>
Sheridan # of Repair Orders	12,048	13,833	14,520	40,401
Sheridan % of Total L.A. Metro Repair Orders	29%	30%	29%	29%

48. Sheridan implemented Toyota's TEAM system for servicing vehicles on November 16, 1978. (RT 123) Each team consists of five mechanics with different skill levels.

The service work is allocated to each mechanic according to the skill required to perform the job. The TEAM mechanics are paid according to the individual skill level, and the quality and quantity of the work performed.

49. The following chart represents the service volume of dealers for the calendar year 1981:

<u>Toyota Dealer</u>	<u>Customer Paid Parts and Labor Gross Sales</u>	<u>Customer Paid Repair Orders</u>	<u>Average Per Repair Order</u>
Sheridan	\$2,076,342	13,219	\$157.07
Crenshaw	273,106	2,607	104.76
A ^{7/}	827,158	7,650	108.12
B	697,284	6,883	101.30
C	696,896	6,173	112.89
D	640,948	5,721	112.03
E	348,497	3,139	111.02

50. Sheridan had a parts inventory valued at approximately \$134,000 in 1980 and a parts inventory valued at approximately \$300,000 in 1981. Sheridan parts sales (wholesale and retail) produced revenues of \$2,059,021 in 1980 and \$2,628,785 in 1981.

^{7/} The letters A through E represent other Toyota dealers in the L.A. Metro area.

51. The following chart represents the number of repair orders performed by the L.A. Metro dealers and the number of written complaints received and logged by Toyota pertaining to each dealership:

1979 through 1981 Calendar Years

	<u>Total Cust. & Warr. R.O.'s</u>	<u>Total No. Complaints</u>	<u>Percent of Complaints</u>
Sheridan	40,401	213	.53
A ^{8/}	22,907	62	.28
B	15,435	62	.41
C	23,404	78	.34
D	22,052	89	.41
E	10,723	7	.07
Crenshaw ^{9/}	4,694	5	.11
Totals	139,616	516	.37
Average Metro	19,945	74	.37

52. For the calendar year 1979 through 1981 Sheridan accounted for 28% of the customer paid and warranty repair orders completed by the L.A. Metro dealers. Sheridan accounted

^{8/} Letters A through E represent other Toyota dealers in the L.A. Metro area.

^{9/} Crenshaw's figures are from June 1980 through 1981.

for 41% of the total number of written complaints received by Toyota relating to the L.A. Metro dealers during the same time period.

53. Many of the customer complaints received by Toyota alleged that Sheridan's representatives were over-selling parts and services.

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

54. Sheridan has geographically the largest primary market area in the Los Angeles Metro area.

55. The number of Toyota dealers in the relevant market area will not change if the relocation is permitted.

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56. The following chart represents the driving distance between Crenshaw and the Toyota dealers in the L.A. Metro, and the driving distance and driving time between the proposed location and the Toyota dealers in the L.A. Metro:

<u>Dealer</u>	<u>Straight Line Distance To Crenshaw</u>	<u>Straight Line Distance To Proposed</u>	<u>Driving Distance To Proposed</u>	<u>Driving Time To Proposed</u>
Sheridan	8.53 Miles	3.41 Miles	3.8 Miles	13:45
Miller	4.22 Miles	4.03 Miles	5.2 Miles	15:00
Inglewood	2.17 Miles	4.96 Miles	6.6 Miles	13:15
Central	4.88 Miles	9.46 Miles		
Hollywood	7.82 Miles	9.69 Miles		
Webber	7.14 Miles	8.61 Miles	11.9 Miles	17:45
Present Crenshaw			7.6 Miles	17:26

57. The following chart represents the percent of registrations of new Toyotas in the Sheridan primary market area attributed to sales made by Sheridan for the years indicated:

	<u>1979</u>	<u>1980</u>	<u>1981</u> (June YTD)
Sheridan	34.5%	34.9%	37.6%
Other Toyota Dealers	65.5%	65.1%	62.4%

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58. The following charts represent retail sales of new Toyotas as compared to fleet sales by dealer for the years indicated:

<u>1980</u>	<u>Sheridan</u>	<u>Crenshaw^{10/}</u>	<u>Central</u>	<u>Inglewood</u>	<u>Hollywood</u>	<u>Miller</u>
Retail Sales	1655	246	1381	728	1095	981
Fleet Sales	11	119	401	8	19	74
Total Sales	1666	365	1782	736	1114	1055
% Retail	99.3	67.4	77.5	98.9	98.3	93

<u>1981</u>	<u>Sheridan</u>	<u>Crenshaw</u>	<u>Central</u>	<u>Inglewood</u>	<u>Hollywood</u>	<u>Miller</u>
Retail Sales	1473	764	1166	953	669	814
Fleet Sales	17	569	252	71	30	58
Total ^{11/} Sales	1490	1333	1418	1024	699	872
% Retail	98.9	57.3	82.2	93.1	95.7	93.3

59. Hornreich has focused his sales efforts on fleet transactions due to his perceived difficulty in promoting retail sales in the Crenshaw area.

^{10/} Represents Crenshaw sales for the period June 1980 through December 1980.

^{11/} Total sales figures for Central, Inglewood, Hollywood, and Miller are annualized.

60. Sheridan obtains new Toyotas through the Toyota dealer allocation system. Sheridan has obtained additional new Toyotas, above its allocated share, through Toyota's incentive allocation. Sheridan has purchased additional new Toyotas from surrounding Toyota dealers.

61. Sheridan sells all of the new Toyotas it is able to obtain. Sheridan anticipates being able to continue selling all of the new Toyotas it is able to obtain regardless of whether Crenshaw is relocated.

FACTS RELATING TO WHETHER THE PROPOSED ACTION IS A
RELOCATION OR THE ESTABLISHMENT OF AN ADDITIONAL FRANCHISE

62. In the first part of 1981 Toyota conducted studies to determine the feasibility and desirability of relocating Crenshaw. Toyota considered several relocation sites including the Marina Del Rey area prior to the present proposed action.

63. Toyota concluded from the feasibility studies that a Toyota dealership was not needed in the Crenshaw area and if the relocation occurs, Toyota does not intend to franchise a dealership at that point.

64. Prior to providing formal notice of relocation, Toyota representatives made presentations to all of the Toyota

dealers in the relevant market area explaining the details of the proposed action.

65. Toyota gave formal notice of Toyota's intention to relocate Crenshaw to all of the Toyota dealers in the relevant market area by letter dated December 15, 1981.

66. In substance the proposed action is a simultaneous cessation of business at the Crenshaw location and the beginning of business at the proposed location under a buy-sell agreement between Hornreich, the owner of Crenshaw, and Hand, the principal owner of Westside.

67. In the event Crenshaw is relocated, the number of Toyota dealers in the relevant market area will not change.

DETERMINATION OF ISSUES

68. Protestant has failed to prove that there is good cause for not permitting the relocation in that:

- a) Protestant proved that its investment is permanent, but failed to prove that its investment will be adversely affected;
- b) Protestant failed to prove that the relocation will have an adverse affect on the retail motor

vehicle business and consuming public in the relevant market area;

- c) Protestant failed to prove that the relocation will be injurious to the public welfare;
- d) Protestant failed to prove that there is adequate competition and convenient consumer care for the owners of Toyota motor vehicles in the market area, including adequate vehicle sales and service facilities, equipment, supply of vehicle parts, and a qualified service personnel; and
- e) Protestant failed to prove that the relocation would not increase competition and failed to prove that the relocation would not be in the public interest.

69. It is further determined that:

- a) Every Toyota dealer in the relevant market area was given adequate and timely notice of the proposed action and afforded full protection under Section 3062;

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- b) Sheridan elected to exercise its rights under Section 3062 and the issues have been fully adjudicated on the merits;

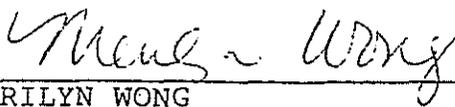
- c) Toyota is precluded from reopening a dealership at the Crenshaw location once the proposed relocation of Crenshaw occurs.

The following proposed decision is respectfully submitted;

The Protest is overruled. Toyota is permitted to relocate Crenshaw to the proposed location.

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, and recommend its adoption as the decision of the New Motor Vehicle Board.

DATED: September 17, 1982



MERILYN WONG
Administrative Law Judge
New Motor Vehicle Board