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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
DALY CITY DATSUN, INC., ) Protest No. PR-431-82  
Protestant, )  
vs. )  
NISSAN MOTOR CORPORATION IN )  
U.S.A., )  
Respondent. )

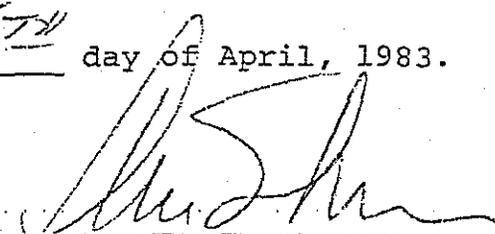
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DECISION

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 6<sup>th</sup> day of April, 1983.

  
ALLAN E. CONE  
President  
New Motor Vehicle Board

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Protest No. PR-431-82

PROPOSED DECISION

PROCEDURAL BACKGROUND

1. By letter dated December 15, 1982, Nissan Motor Corporation in U.S.A. (Nissan), gave notice pursuant to Vehicle Code §3062 1/, of its intention to relocate Van Ness Datsun from its present location at 1400 Van Ness Avenue, San Francisco, California, to 2300 16th Street, San Francisco, California.

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

2. On December 30, 1982, Daly City Datsun filed a protest with the New Motor Vehicle Board (Board) pursuant to Vehicle Code §3062.

3. A hearing was held in Sacramento on March 3, 1983, before Kent S. Hori, Administrative Law Judge of the Board.

4. Daly City Datsun was represented at the hearing by Peter Anderson of the law firm of Thelen, Marrin, Johnson & Bridges. Nissan was represented by Robert E. Cooper, Gail E. Lees and Elizabeth A. Grimes of the law firm of Gibson, Dunn & Crutcher, and by Ann Jennings of Nissan.

#### ISSUES PRESENTED

5. Protestant contends that there is good cause for not relocating Van Ness Datsun for the following reasons:

- (a) The protestant's investment is permanent and will be adversely affected by the relocation of Van Ness Datsun; [§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 Van Ness Datsun will be injurious to the public welfare; [§3063(3)]
- (d) The Nissan franchisees in the relevant market area are providing adequate competition and convenient consumer care for the owners of Nissan 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 therefore would not be in the public interest. [§3063(5)]

FINDINGS OF FACT

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

6. Daly City Datsun is a corporation organized under the laws of the State of California. Its business office is located at 7283 Mission Street, Daly City, California.

7. Martin D. Morganstern is President and Chairman of the Board of Daly City Datsun and is employed full-time operating the dealership. Mr. Morganstern was a practicing attorney in California until 1972, when he acquired a minority

interest in Daly City Datsun. He acquired a majority interest in May, 1975 and currently owns 92% of the stock of Daly City Datsun.

8. Van Ness Datsun is located at 1400 Van Ness Boulevard in San Francisco, California. The dealership is owned by Autopacific, Inc. (Autopacific), a corporation organized under the laws of the State of California. Martin Swig owns approximately 88% of the stock of Autopacific. In addition to Van Ness Datsun, Autopacific owns Mazda, Isuzu, Saab, and Alfa Romeo dealerships. Swig also has an ownership interest in a Toyota dealership through a separate corporation.

9. Swig entered the auto industry as a used car salesman while attending college. From 1958 to 1969 he managed a Mercedes-Benz dealership in San Francisco. The Van Ness Datsun dealership was acquired in 1969. Mr. Swig is currently the General Manager at Van Ness Datsun.

10. Van Ness Datsun is located on property leased by Autopacific. Autopacific pays an annual rent of approximately \$30,000. The current lease expires on October 31, 1983, at which time Autopacific will vacate the premises. The premises have already been leased to a new tenant at an annual rent of approximately \$96,000.

11. Autopacific executed an interim lease agreement covering the facilities at the proposed location. Autopacific commenced payments under the interim lease in August, 1982. Autopacific subsequently executed a formal lease agreement covering the facilities at the proposed location. The lease will commence on April 1, 1983, with an annual rent of approximately \$500,000. The proposed location will house sales and service departments for all of the Autopacific dealerships, in addition to Swig's Toyota dealership.

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

12. The protestant presented no evidence on the effect the proposed relocation would have on the retail motor vehicle business and the consuming public in the relevant market area.

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13. There are currently three Nissan dealerships in the relevant market area: Daly City Datsun, Van Ness Datsun and Bauer Datsun. The following chart indicates the present straight-line mileage distances between Nissan dealerships in the relevant market area:

<u>Dealership</u>	<u>Miles</u>
Van Ness Datsun to Bauer Datsun	2.7
Van Ness Datsun to Daly City Datsun	7.8
Bauer Datsun to Daly City Datsun	5.1

14. The chart below represents the present straight-line mileage distances between Nissan dealerships in the relevant market area and the proposed location of Van Ness Datsun:

<u>Dealership</u>	<u>Miles to Proposed Location</u>
Van Ness Datsun	2.1
Daly City Datsun	6.7
Bauer Datsun	1.7

15. Nissan conducted a market study in July, 1979, which indicated that Bauer Datsun was located in a poor demographic market area. The market study proposed that Bauer Datsun relocate to Geary Boulevard in northeastern San Francisco. Peter A. Bauer, the President of Bauer Datsun, intends to move

his dealership from its present location at 1358 Valencia Street to the Geary Boulevard area in June, 1983.

16. The present Van Ness Datsun sales facility is located at 1400 Van Ness Avenue. Van Ness Datsun also operates a separate, new car "get-ready" facility, located at the intersection of Pine and Franklin Streets, two blocks from the sales facility. A separate body shop is located on California Street between Van Ness and Franklin, two blocks from the sales facility.

17. The present service facility for the Autopacific dealerships (Van Ness Datsun, Mazda, Isuzu, Saab, and Alfa Romeo) is located at 900 Polk Street, approximately five blocks from the sales facility at 1400 Van Ness Avenue. The service department operates at full capacity. The lease on this facility expires in November, 1986, with no option to renew.

18. The proposed location will house sales and service departments for all of the Autopacific dealerships, in addition to Swig's Toyota dealership.

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19. A lack of adequate parking space at the present Van Ness Datsun service facility promotes traffic congestion on the streets and inefficiency in the service department. Customers must often line up in the street in front of the facility while waiting for service.

20. Autopacific pays approximately \$500.00 per month in parking tickets, due to the necessity of having to park vehicles on the sidewalk and in metered spaces.

21. It is anticipated that expenditures on improvements to the facility at the proposed location will exceed one million dollars.

FACTS RELATING TO WHETHER IT IS INJURIOUS TO THE  
PUBLIC WELFARE FOR VAN NESS DATSUN TO RELOCATE  
[§3063(3)]

22. The protestant presented no facts to show that the relocation would be injurious to the public welfare.

23. The total area of the present Van Ness Datsun facilities is approximately 40,000 square feet. The total area of the facilities at the proposed location allocated to Nissan will be approximately 81,000 square feet.

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24. Van Ness Datsun will operate a mini-bus service at the site of the proposed location. Transportation will be provided to and from Union Square, the Civic Center, downtown shopping centers, and the financial district.

25. Autopacific operates a used car facility on Pine Street, approximately one-half block from Van Ness Avenue. The total area of the facility is 6,000 square feet. Due to the limited availability of space in which to store and display used vehicles, Autopacific must wholesale the majority of cars accepted as trade-ins instead of selling the vehicles at retail. The trade-in allowance which a customer receives is affected by whether a dealership intends to wholesale or retail the trade-in.

26. Due to an increase in the construction of high-rise offices and condominiums, and a corresponding increase in property rent, the Van Ness Avenue area is becoming impractical as a location for automobile dealerships.

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FACTS RELATING TO WHETHER NISSAN DEALERS IN THE RELEVANT  
MARKET AREA ARE PROVIDING ADEQUATE COMPETITION  
AND CONVENIENT CONSUMER CARE FOR OWNERS OF  
NISSANS IN THE MARKET AREA [§3063(4)]

27. The protestant presented no evidence to show that Nissan dealers in the relevant market area are providing adequate competition and convenient consumer care for Nissan products in the market area.

28. The service department at the present Van Ness Datsun facility operates at full capacity.

29. By Nissan's standards, the Van Ness Datsun facilities have been inadequate in terms of space for parts, service, and customer and employee parking since the mid-1970s.

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

30. Protestant presented no evidence to show that the relocation would not increase competition, and therefore not be in the public interest.

31. The proposed location will provide ease of access to separate showrooms for five different line-makes and have ample free parking for customers.

32. The proposed location will contain approximately 70 service stalls, approximately 40% more stalls than exist at the present service facility at 900 Polk Street.

33. The proposed location will enable the service and parts departments to operate two shifts and be open for business on Saturday.

34. Each of the Autopacific dealerships has a separate sales manager and separate salespersons who sell only those line-makes to which they are assigned.

35. The dealer principals of Bauer Datsun and Van Ness Datsun, Bauer and Swig, have exchanged mutual promises not to protest each other's relocation.

#### DETERMINATION OF ISSUES

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

- a) Protestant failed to prove that its investment is permanent, and failed to prove that its investment will be adversely affected; [§3063(1)]

- b) Protestant failed to prove that the relocation will have an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area; [§3063(2)]
  
- c) Protestant failed to prove that the relocation will be injurious to the public welfare; [§3063(3)]
  
- d) Protestant failed to prove that there is adequate competition and convenient consumer care for the owners of Nissan motor 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) 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.  
[§3063(5)]

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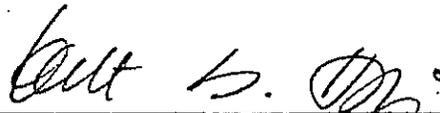
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The following proposed decision is respectfully submitted;

The Protest is overruled. Nissan is permitted to relocate Van  
Ness Datsun 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: April 1, 1983



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KENT S. HORI  
Administrative Law Judge  
New Motor Vehicle Board