
**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT**

AGENDA ITEM No. 6

DATE: August 12, 2009

TO: Fresno Local Agency Formation Commission

FROM: Rick Ballantyne, Executive Officer
Darrel Schmidt, Deputy Executive Officer

SUBJECT: **Conducting Authority Proceedings - City of Fresno "Ashlan-Bryan No. 1 Reorganization"**. A proposed reorganization submitted by landowner petition to annex 80.44 acres to the City of Fresno and detach from the North Central Fire Protection District and the Kings River Conservation District for territory located on the north side of W. Ashlan Avenue between N. Bryan and N. Hayes Avenues (**LAFCo File No. RO-09-1**).

Background and Summary

- This protest hearing is being conducted pursuant to the California Government Code commencing with Section 57000 which requires LAFCo to carry out Conducting Authority Proceedings.
- At its June 10, 2009 meeting, the Commission conditionally approved the "Ashlan-Bryan No. 1 Reorganization" by adopting Resolution No. RO-09-1, attached to this Report as Exhibit "A", and incorporated herein by this reference. This protest hearing is required because not all landowners had formally consented to the annexation prior to the Commission's action.
- The original proposal consisted of the annexation of 80.44 acres to the City of Fresno and detachment from the North Central Fire Protection District and the Kings River Conservation District for territory located on the north side of W. Ashlan Avenue between N. Bryan and N. Hayes Avenues. The Commission at its hearing deleted ten parcels from the subject proposal and made all necessary findings as required per State law in order to do so (see Exhibit "A"). The resultant territory totals 67.91 acres.
- At today's hearing, prior to consideration of protests, the Commission's resolution making determinations will be summarized. The Commission will then hear and receive any oral or written protests, objections, or evidence made, presented, or filed.
- All property owners in the affected territory were sent written notice of this hearing; instructions on how to protest; and an official protest form (see Exhibit "B").
- At any time prior to the conclusion of this hearing any landowner within the affected territory may file a written protest against the annexation.
- Should insufficient valid protests be received and not withdrawn, the Commission's determination to conditionally approve the reorganization stands.

Recommendation

It is recommended that the Commission direct the Executive Officer to determine the value of valid protests received and not withdrawn and report these results to the Commission within the time prescribed by State law. If feasible, report these results at this hearing.

Conducting Authority Proceedings

Executive Officer's Summary

The following is a summary of the Commission's Resolution making determinations, which must be presented at the hearing prior to the Commission's consideration of any protest(s).

- At its June 10, 2009 meeting, having considered all relevant factors and heard all interested parties wishing to speak regarding the proposal, the Commission determined that the environmental effects of the project as shown in the CEQA documents submitted by the Lead Agency (City of Fresno) were legally adequate pursuant to the CEQA Guidelines and that the proposed reorganization was consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and LAFCo Policies, Standards, and Procedures.
- Pursuant to Government Code Section 56375(m), the Commission found that in order to waive restrictions on islands as per Government Code Section 56744 that the annexation of the subject territory is necessary to promote orderly development and that the territory cannot reasonably be annexed to another city or incorporated as a new city.
- Pursuant to Government Code Section 56375(a)(7), the Commission found that APNs 512-070-06, 16, and 35 qualified for exemption from the pre-zoning requirement.
- The Commission, therefore, approved the proposed Reorganization subject to conditions as contained within the adopted Fresno LAFCo Commission Resolution (see Exhibit "A").
- Having determined that the affected territory is uninhabited, but that not all landowners in the territory consented to the annexation in writing, the Commission directed staff to set a protest hearing pursuant to the requirements of California Government Code Section 57000.

Public Testimony

Prior to making its determination for this proposal the Commission must hear and receive any oral or written protests, objections, or evidence made, presented, or filed. The Chairman may call for any final protests to be filed or withdrawn prior to closing the public hearing. The annexation will be terminated if written protests filed with the Executive Officer (and not withdrawn) are sufficient to overturn the Commission's action. Protest procedures for uninhabited annexations are outlined below:

Commission Action

In the case of an uninhabited proposal for a City where a change of organization consists of an annexation and detachment, the Commission is required to make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions not more than 30 days after the conclusion of the hearing:

- (1) Terminate proceedings if a majority protest exists. A majority protest is deemed to exist and the proposed reorganization shall be abandoned if the Commission finds that written protests filed and not withdrawn prior to the conclusion of the hearing represent landowners owning 50 percent or more of the assessed value of the land within the territory (Government Code Section 57078a).
- (2) Order the change of organization or reorganization if written protests have been filed and not withdrawn by owners of land who own less than 50 percent of the total assessed value of land within the affected territory.

Annexation Ordered

The change of organization (annexation) will be ordered if the number of protests filed with the LAFCo Executive Officer (and not withdrawn) falls below the threshold numbers stated above and subject to the conditions as set forth in the Commission's Resolution RO-09-1 (See Exhibit "A").

Calculating the Value of Protests Received

At the close of the public hearing, staff may be directed to determine the value of valid protests received and not withdrawn. Should substantial valid protests be received and not withdrawn, staff may be directed to determine the value of all protests and issue written results to the Commission within 30 days. The reorganization will stand as approved if the number of protests filed with LAFCo (and not withdrawn) falls below the thresholds described above.

RESOLUTION NO. RO-09-1
FRESNO LOCAL AGENCY FORMATION COMMISSION
FRESNO COUNTY, CALIFORNIA

IN THE MATTER OF

LAFCO DETERMINATION

**A REQUEST BY LANDOWNER PETITION)
FOR APPROVAL OF THE "ASHLAN-BRYAN)
NO. 1 REORGANIZATION")**

**APPROVED WITH CONDITIONS
AND REVISED BOUNDARIES**

WHEREAS, reorganization proceedings were initiated by Landowner Petition to annex 80.44 acres to the City of Fresno and detach from the North Central Fire Protection District and the Kings River Conservation District for territory located on the north side of W. Ashlan Avenue between N. Bryan and N. Hayes Avenues, said territory being described within Exhibit "A" attached hereto and by this reference incorporated herein; and

WHEREAS, an application in accordance with State law filing requirements was submitted by landowner petition and the application for said proposed reorganization was accepted for filing by the Executive Officer and set for hearing on the 10th day of June, 2009, at the hour of 1:30 p.m.; and

WHEREAS, notice of said hearing was given as required by State law; and

WHEREAS, a Master Property Tax Sharing Agreement exists between the City of Fresno and the County of Fresno, both being the responsible local agencies for the exchange of property tax revenues covering this reorganization; and

WHEREAS, the County of Fresno submitted a letter to this Commission stating that the County has determined that the proposed annexation of the affected territory to the City of Fresno is consistent with the Master Property Tax Sharing Agreement; and

WHEREAS, the Executive Officer reviewed the application and prepared a report to this Commission, including a recommendation for approval upon certain conditions, said report having been mailed at least five days before the public hearing; and

WHEREAS, said report was duly considered by this Commission pursuant to State law; and

WHEREAS, this Commission reviewed and considered all information contained within the Environmental documents prepared by the City of Fresno including the Initial Studies, the Mitigation Measures, and the Finding of Conformity with the Master Environmental Impact Report (MEIR) No. 10130, all of which were included within the Executive Officer's report to this Commission; and

WHEREAS, this Commission considered all relevant factors and evidence and heard all interested parties wishing to speak on said application; and

WHEREAS, this Commission considered testimony from residents of properties located near the intersection of W. Ashlan and N. Hayes Avenues, who requested that their properties be removed from the reorganization proposal; and

WHEREAS, this Commission considered said request and made a determination that while excluding said parcels would result in the creation of a substantially surrounded area, that in accordance with Government Code Section 56375(m) that inclusion of these parcels whose owners were requesting exclusion would be detrimental to the orderly development of the community as outlined within staff's report and that said parcels could not be reasonably annexed to another city or incorporated as a new city.

NOW, THEREFORE, BE IT RESOLVED that the Fresno Local Agency Formation Commission does HEREBY STATE, FIND, RESOLVE, DETERMINE, AND ORDER as follows:

Section #1. Acting as "Responsible Agency" pursuant to California Environmental Quality Act (CEQA) Guidelines, this Commission finds that prior to approving the Reorganization, the environmental effects of the project as shown in the CEQA documents prepared, adopted, and submitted by the City of Fresno (Lead Agency), were reviewed and considered, and determines these documents to be legally adequate pursuant to CEQA Guidelines Section 15096.

Section #2. This Commission finds that the proposed reorganization is consistent with LAFCo Policies, Standards, and Procedures Section 210 - Standards for Annexation to Cities and Urban Service Districts (01-10), and the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

Section #3. This Commission finds, as required by Government Code Section 56375(m), that in order to waive restrictions on islands as per Government Code Section 56744, this Commission determines that the annexation of the subject territory is necessary to promote orderly development and that the territory cannot reasonably be annexed to another city or incorporated as a new city.

Section #4. This Commission finds that APNs 512-070-06, 16, and 35 qualify for exemption from the pre-zoning requirement pursuant to Government Code Section 56375(a)(7) and LAFCo Policies, Standards, and Procedures Section 210-13 since these parcels are developed with single-family residential uses consistent with the City of Fresno's West Area Community Plan and the 2025 Fresno General Plan.

Section #5. This Commission assigns the distinctive short form designation "Ashlan-Bryan No. 1 Reorganization" and approves the reorganization with revised boundaries to delete APNs 512-070-10, 11, 20, 21, 27, 40, 43, 44, 49, & 51 (the "excluded parcels"), subject to the following conditions of approval:

- A. Ownership of land permitting, the reorganization shall include the full existing right-of-way width of W. Ashlan, N. Bryan, and N. Hayes Avenues.
- B. The City of Fresno shall succeed to Land Conservation Contract No. 1229 upon annexation of the affected territory, as per its adopted rules and procedures, and as set forth in Sections 51231, 51237, and 51237.5 of the California Government Code.
- C. Conditions for Revised Land Conservation Contract (RLCC) Nos. 866 and 867 shall be satisfied prior to recordation.

Section #6. This Commission finds that the inclusion of the "excluded parcels" would be detrimental to the orderly development of the community pursuant to Government Code Section 56375 (m).

Section #7. This Commission finds and determines pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that:

- A. The territory is uninhabited.
- B. Not all landowners have consented to the annexation.

Section #8. This Commission directs staff to set a protest hearing pursuant to the requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 57000 et seq.).

ADOPTED THIS 10th DAY OF JUNE, 2009, BY THE FOLLOWING VOTE:

AYES: Commissioners Lopez, Fortune, Lujan, Anderson, Perea

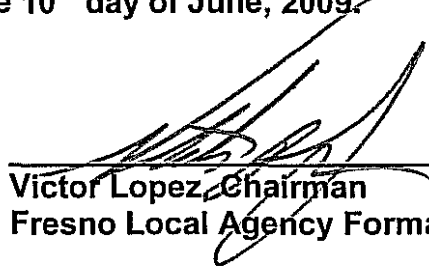
NOES: None

ABSENT: Commissioner Rodriguez

**STATE OF CALIFORNIA)
COUNTY OF FRESNO)**

CERTIFICATION

I, Victor Lopez, Chairman of the Fresno Local Agency Formation Commission (LAFCo), Fresno County, State of California, hereby certify that the foregoing resolution was adopted by the Commission on the 10th day of June, 2009.





**Victor Lopez, Chairman
Fresno Local Agency Formation Commission**

EXHIBIT "A"



Legend

-  City Limits
-  Affected Territory

City of Fresno "Ashlan-Bryan
No. 1 Reorganization"
LAFCo File No. RO-09-1

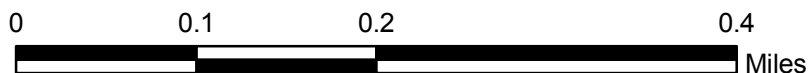


Exhibit "B"

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCO) NOTICE OF PROTEST HEARING

PLEASE BE ADVISED THAT A PROTEST HEARING will be held by the Fresno Local Agency Formation Commission (LAFCo) **on Wednesday, August 12, at 1:30 p.m., or as soon thereafter as possible**, in Room 301, Hall of Records, Tulare and "M" Streets, in downtown Fresno concerning the following:

City of Fresno "Ashlan-Bryan No. 1 Reorganization". A proposed reorganization submitted by landowner petition to annex 80.44 acres to the City of Fresno and detach from the North Central Fire Protection District and the Kings River Conservation District for territory located on the north side of W. Ashlan Avenue between N. Bryan and N. Hayes Avenues. The City of Fresno approved a General Plan Amendment; Tentative Tract Map, Pre-Zoning, and a Conditional Use Permit Application for a 63-acre portion of the affected territory. These entitlements provide for development of a Neighborhood Commercial Center; a 676-lot planned residential development including landscaping and common areas; and future multi-family residences. It should be noted that this proposed development will tie in with properties being urbanized within the City of Fresno to the north (**LAFCo File No. RO-09-1**).

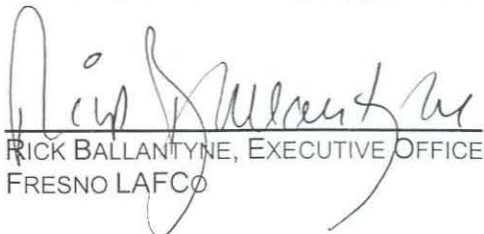
Note: At the June 10, 2009 LAFCo Hearing, the Commission did approve the above proposal but deleted APNs 512-070-06, 10, 11, 16, 20, 21, 27, 35, 40, 44, 43, 49, & 51 from the Reorganization proposal. The resultant territory to be annexed is shown in the attached map.

HOW TO FILE A PROTEST: Owners of land within the boundaries of the affected territory may file written protests in opposition to the proposed annexation. Protests may either be mailed or delivered to Fresno LAFCo, 2115 Kern Street, Suite 310, Fresno, CA 93721, or presented to the Commission before the end of the protest hearing. You need not attend the hearing to file a protest, but each protest form must state that you are a landowner and must include your name, mailing address and street address (if different) or an Assessor Parcel Number (APN) identifying the location of your property within the affected territory. Written protests must be filed and received no later than the conclusion of the hearing to be considered valid. Each protest filed will be counted separately. An Official LAFCo Protest Form is attached if you wish to file a protest. This form may be copied. The results of protests received will be determined within 30 days following the hearing in accordance with California Government Code Sections 57075 and 57078.

MAJORITY PROTEST: In the case of uninhabited territory (**like yours**), proceedings will be terminated if the Commission finds that valid written protests filed and not withdrawn prior to the conclusion of the Protest Hearing represent landowners owning 50 percent or more of the assessed value of the land within the affected territory.

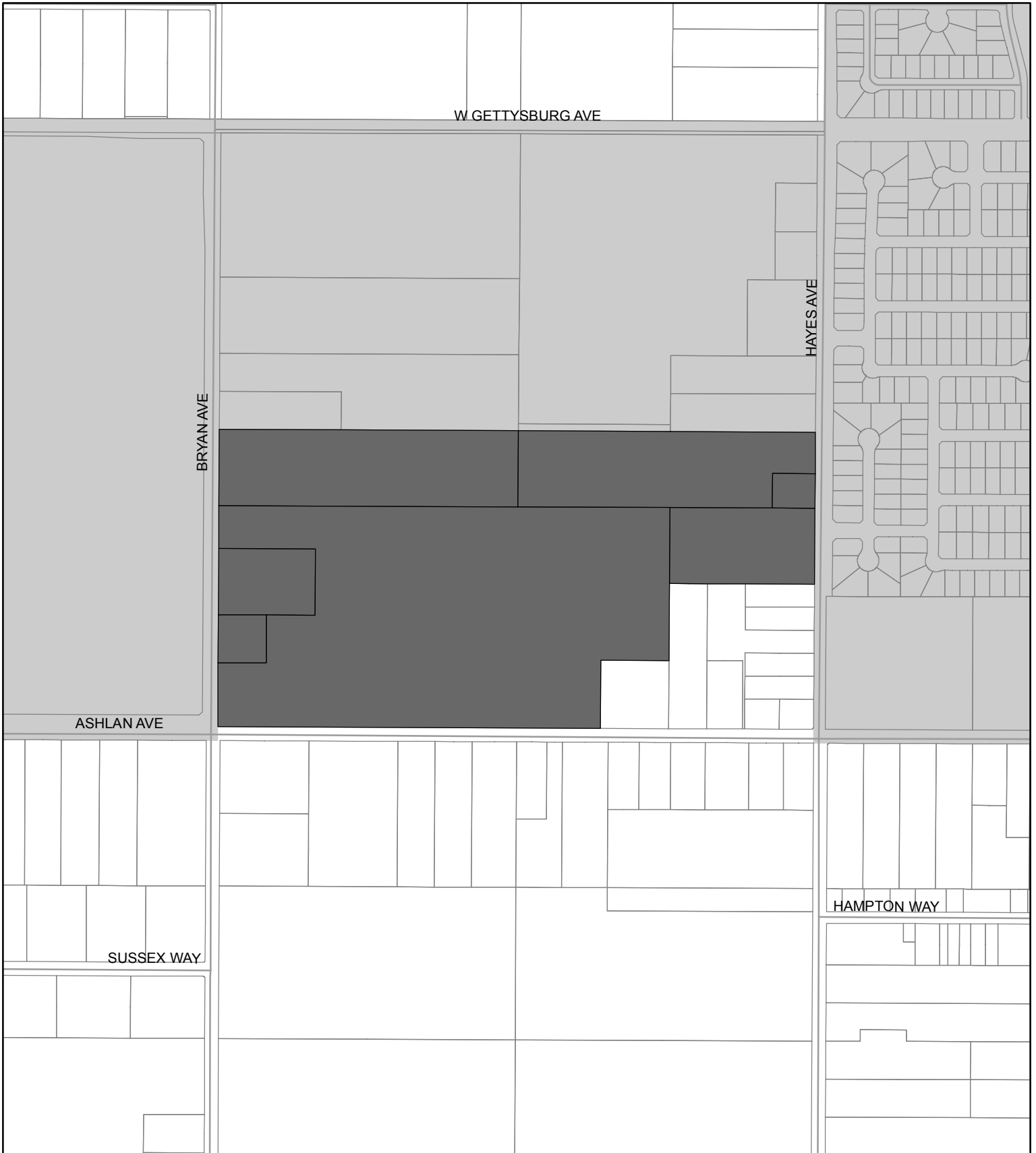
ANNEXATION WILL OCCUR: Annexation of your property to the City of Fresno will occur if the Commission finds that valid written protests filed and not withdrawn prior to the conclusion of the Protest Hearing represent landowners owning less than 50 percent of the assessed value of the land within the affected territory.

The staff report for this item will be available five days before the hearing on our Website at www.fresnolafco.org, or for additional information, contact the Commission Office at 2115 Kern Street, Suite 310, Fresno, CA 93721. Please direct any questions or comments to Rick Ballantyne, LAFCo Executive Officer at (559) 495-0604 or e-mail Mr. Ballantyne at rballantyne@co.fresno.ca.us.




RICK BALLANTYNE, EXECUTIVE OFFICER
FRESNO LAFCO

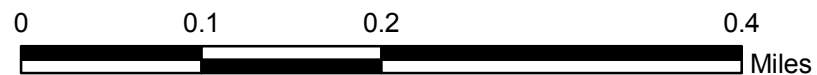
DATED: July 20, 2009
LAFCo File No.: RO-09-1

EXHIBIT "A"



Legend

-  City Limits
-  Affected Territory



City of Fresno "Ashlan-Bryan
No. 1 Reorganization"
LAFCo File No. RO-09-1



OFFICIAL LAFCo PROTEST FORM
CITY OF FRESNO "ASHLAN-BRYAN NO. 1 REORGANIZATION"

Each of the undersigned is the landowner of the property located within the proposal area described below. The undersigned hereby protests the proposed "Ashlan-Bryan No. 1 Reorganization" as provided for in Section 57051 of the California Government Code.

NAME OF PROPOSAL: "ASHLAN-BRYAN NO. 1 REORGANIZATION", RO-09-1

Land Owner

Date _____ **Name** _____
(Please type or print)

Full Legal Signature _____

Address _____
Number Street City or town

Description of affected property if not at above address _____
Assessor's Parcel Number if known

Address or other description

NAME OF PROPOSAL: "ASHLAN-BRYAN NO. 1 REORGANIZATION", RO-09-1

Land Owner

Date _____ **Name** _____
(Please type or print)

Full Legal Signature _____

Address _____
Number Street City or town

Description of affected property if not at above address _____
Assessor's Parcel Number if known

Address or other description

NAME OF PROPOSAL: "ASHLAN-BRYAN NO. 1 REORGANIZATION", RO-09-1

Land Owner

Date _____ **Name** _____
(Please type or print)

Full Legal Signature _____

Address _____
Number Street City or town

Description of affected property if not at above address _____
Assessor's Parcel Number if known

Address or other description

PLEASE NOTE - This official protest form must be utilized to submit a valid protest. The use of any other form will invalidate your protest. It is understood that for landowner protests involving a parcel with more than one owner listed on the County's Assessment Roll, only the signer's proportionate share of the value of the property will be credited in the protest.