



Lou Ann Teixeira
Executive Officer

August 12, 2026
Agenda Item #5

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION
EXECUTIVE OFFICER'S REPORT

August 12, 2026 (Agenda)

LAFCO 25-06 – Annexation to City of Clayton – Clayton Estates

APPLICANT

Clayton Estates, LLC, Jim J. and Julie F. Moita Trust - (Landowners)

SYNOPSIS

The applicant proposes to annex 41.5± acres located along Marsh Creek Road for residential development. The location is east of the City of Clayton.

DISCUSSION

Government Code §56668 sets forth factors that the Commission must consider in evaluating a proposed boundary change as discussed below. Government Code section 56375 authorizes the Commission to review and approve or disapprove annexation proposals. The attached Resolution No. 25-06 denies the Clayton Estates annexation application, based on the findings included in the resolution.

1. *Consistency with the Sphere of Influence (SOI) of Any Local Agency:*

The property proposed for annexation has been within the City of Clayton's SOI since the 1990s. No SOI amendment is required. Regarding the City Urban Limit Line (ULL), 13.5± acres are within the ULL, and 28.5± acres are outside the ULL.

2. *Changes in Land Use, Planning and Zoning - Present and Future:*

The existing land use is cattle grazing for fire mitigation purposes. The applicant notes that cattle grazing is not economically viable land use given the high property taxes and special assessments intended to support development. The land is undeveloped besides an access road. The proposed boundary would facilitate the use of less than half of the land for low-density residential and dedication of over 50% of the land use for open space.

3. *The Effect on Maintaining the Physical and Economic Integrity of Agricultural and Open Space Lands:*

The subject area contains no prime farmland, no land covered under the Williamson Act Land Conservation agreements, no conservation of agricultural land, no agricultural preserve area, no land within a land conservation easement, and not adjacent to a greenbelt. The proposal eliminates the need for septic.

4. *Topography, Natural Features and Drainage Basins:*

The topography is generally flat and marshland. The northern half of the western property line of the proposal area abuts the *Clayton Community Clayton Community Park and Diablo View Middle School*. The southern half of the western property line of the proposal abuts the Oak Creek Canyon subdivision.

5. *Population:*

Regarding population, no units exist on the annexation site. The annexation might allow for future development of 29-35 single-family homes. Assuming 35 units are built and an average household of 2.5, approximately 87 people might be added to the City.

6. *Governmental Services and Controls - Need, Cost, Adequacy and Availability:*

An application for a change of organization or reorganization typically requires a plan for providing services within the affected territory (Gov. Code §56653). The plan for service is available in the LAFCO office at 40 Muir Road, Martinez. The plan for service must include all of the following information:

- (1) An enumeration and description of the services to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory.
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

7. *The Comments of Any Affected Local Agency:*

On May 6, 2026, the City of Clayton City Manager submitted a letter raising concerns about the proposed application. These include concerns about the plan for services required by Government Code section 56653, whether the 1995 Marsh Creek Road Specific Plan and EIR have been reviewed to determine any changed circumstances require a supplemental review, and the status of the property tax sharing agreement.

On May 7, 2026, the Contra Costa County Conservation and Development Director submitted a letter raising concerns about CEQA, the ULL of both the County and cities in the County, including the existing property tax transfer agreement between the County and cities in the County, including Clayton. On June 22, 2025, the City of Clayton City Manager submitted a letter requesting that the Commission deny the application.

8. *Land in a Very High Fire Hazard Zone:*

The site is located in and completely surrounded by a very high fire hazard zone, according to a map prepared by the State Fire Marshal.

RECOMMENDATIONS:

It is recommended that the Commission:

1. Open the Public Hearing, receive testimony, and close the public hearing
2. Adopt Resolution No. 25-06 making determinations and denying the Clayton Estates annexation application, based on the findings included in the resolution.

Lou Ann Texeira

LOU ANN TEXEIRA, EXECUTIVE OFFICER

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

Exhibits

A – Annexation Map

B – Resolution No. 25-06

RESOLUTION NO. 25-06

RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION MAKING DETERMINATIONS AND DENYING ANNEXATION TO THE CITY OF CLAYTON CLAYTON ESTATES

WHEREAS, on December 29, 2025, Clayton Estates LLC and the Jim J. and Julie F. Moita Trust filed an application to annex to the City of Clayton (*Clayton Estates Property*); and

WHEREAS, the application includes approximately 41.5± acres located along Marsh Creek Road east of the City of Clayton; and

WHEREAS, the proposed annexation area is located in unincorporated Contra Costa County and is currently zoned A-2 agriculture; and

WHEREAS, the proposed annexation area has been within the City's Sphere of Influence (SOI) since the early 1990s; and

WHEREAS, the proposed annexation area includes APNs 075-200-021 and 075-200-022 (each owned by Clayton Estates LLC) and those certain portions of 075-200-030 that lie within the City's SOI (owned by the Jim J. and Julie F. Moita Trust); and

WHEREAS, in June 1995, the City of Clayton adopted its Marsh Creek Road Specific Plan and approved an environmental impact report (EIR) in conjunction with the adoption of the specific plan. The Marsh Creek Road Specific Plan area is located to the south and east of the City of Clayton; and

WHEREAS, the City of Clayton amended its Marsh Creek Road Specific Plan in April 2005; and

WHEREAS, portions of the annexation area have specific plan development designations in the Marsh Creek Road Specific Plan of low density residential; and

WHEREAS, approximately 13.5 acres of the annexation area are located within the City of Clayton's Urban Limit Line (ULL) and approximately 28 acres are located outside the ULL; and

WHEREAS, no entitlement applications for the annexation area are pending with the City of Clayton; and

WHEREAS, the LAFCO Executive Officer issued a Certificate of Filing for the proposal on March 23, 2026; and

WHEREAS, on May 13, 2026, the annexation proposal came on regularly for hearing before the Commission at the time and place specified in the notice prepared by the Executive Officer and published in the East Bay Times. The Commission accepted public comment on the application on May 13, 2026, and moved to continue the hearing to July 8, 2026; and

WHEREAS, on July 8, 2026, the Commission accepted public comment on the application and moved to continue the hearing to August 12, 2026; and

WHEREAS, on August 12, 2026, the Commission held a public hearing on the application. At the hearing, an opportunity was given to all interested persons, organizations, and agencies to present oral or written testimony, objections, and any other information concerning the application and all related matters.

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

The Commission **denies** the application, based on the following findings:

1. The Commission finds that the application improperly designates the City of Clayton as lead agency for CEQA purposes.

The annexation application lists the City of Clayton as the lead agency. (Application, p. 12.) CEQA Guidelines section 15051(b)(2) provides: “When a city prezones an area, the city will be the appropriate Lead Agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the rezoning. The Local Agency Formation Commission shall act as a Responsible Agency.” However, the City has not prezoned the area. Government Code section 65859 provides that a city may “prezone unincorporated territory to determine the zoning that will apply to that territory upon annexation to the city.” For this application, the City of Clayton has not prezoned the proposed annexation area to authorize residential development. Portions of the annexation area have specific plan development designations in the Marsh Creek Road Specific Plan of “Low Density Residential,” but a specific plan development designation is not equivalent to a rezoning designation. There is no evidence in the record that the annexation area was prezoned in accordance with City of Clayton Municipal Code section 17.28.040, which requires a rezoning application to comply with Clayton Municipal Code chapter 17.56. Because the City of Clayton has not prezoned the proposed annexation area to authorize residential development, the City is not the proper lead agency for the proposed agency, and the initial study required by Article 5 of the CEQA Guidelines (commencing with CEQA Guidelines Section 15060) was not prepared. The initial study is the “preliminary analysis prepared by the lead agency to determine whether an EIR or a negative declaration must be prepared or to identify the significant environmental effect to be analyzed in an EIR.” (CEQA Guidelines, section 15365.)

2. The Commission finds that the application improperly relies on an EIR prepared in 1995 by the City of Clayton for a different project.

In June 1995, the City of Clayton approved an EIR in conjunction with its adoption of the City’s Marsh Creek Road Specific Plan. Under CEQA Guidelines section 15153, an earlier EIR prepared in connection with an earlier project [may be used] to apply to a later project, if the circumstances of the projects are essentially the same.” The Commission finds that the circumstances of the separate projects are not “essentially the same.” A comment letter from Save Mount Diablo states that “[t]he impacts and realities of climate change, the [proposed annexation’s] impacts on newly listed (or at least listed since 1995), threatened and endangered species, the increase in protected areas around Clayton, development in the area that has occurred in the last three decades, modern measurements and methods for air pollution analysis, impact on public services of the [proposed annexation] in the era of super-charged, climate-change fueled wildfire and more all point to the need for updated environmental review under CEQA.” Because the circumstances of the separate projects are not “essentially the same,” the application improperly relied on the specific plan EIR, resulting in an inadequate CEQA analysis.

3. The Commission finds that the proposed annexation is not consistent with the City of Clayton General Plan.

Government Code section 56668(h) authorizes the Commission to consider a proposal's consistency with a city general plan. Approximately 28 acres of the proposed annexation are outside the City of Clayton's Urban Limit Line as shown on the City's General Plan Map. A portion of the 28 acres outside the Urban Limit Line is land designated as residential in the City General Plan. The application states that a portion of the Urban Limit Line will have to be adjusted in the future. Because a portion of proposed residential land is outside the City's Urban Limit Line, the proposed annexation is inconsistent with the City's General Plan.

4. The Commission finds that the annexation is not consistent with the planned and probable use of the property.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the CKH Act) – specifically, Government Code section 56375(e) – provides that a Local Agency Formation Commission may “approve the annexation of unincorporated territory consistent with the planned and probable use of the property based upon the review of general plan and rezoning designations.” Because the annexation area has not been rezoned in accordance with the Clayton Municipal Code, as noted in finding 2, and because the proposed annexation is inconsistent with the City's General Plan, as noted in finding 3, the Commission finds that, pursuant to Government Code section 56375(e), the annexation is not consistent with the planned and probable use of the property.

5. The Commission finds that the service plan prepared for the application is inadequate.

Government Code section 56653 requires an annexation application to include a plan for providing services within the affected territory. The application's description of the level and range of the proposed services is: “Sufficient services for eventual development of 29-35 single-family homes.” The Commission finds that this is not an adequate description of the level and range of the services proposed for the annexation. Further, under subsection (b)(4) of section 56653, the service plan must include, among other requirements, “an indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the [annexation] is completed.” The service plan does not refer to, and has not evaluated, the City's ability to provide sewer services to the property. The service plan also has not fully evaluated the roads required for the annexation. According to the City, streets that were approved for the Oak Creek Canyon project do not extend to the properties listed in the application. The application does not include a statement from the City describing its ability to provide services that are the subject of the application, as required by line No. 17 of Contra Costa LAFCO's Questionnaire for Annexations, Detachment and Reorganizations.

6. The City of Clayton is opposed to the annexation.

Government Code section 56668(j) authorizes the Commission to consider the comments of any affected local agency. The City of Clayton, through its City Manager, has requested that the Commission deny the application on grounds that: (1) the City was not consulted on a property tax

sharing agreement between the City and Contra Costa County before the Certificate of Filing was issued, and (2) there has been a failure to comply with CEQA. The application incorrectly states that the “City has not expressed opposition to this annexation and previously worked to achieve it.” (Application, p. 13.)

7. The annexation area is located in a very high fire hazard severity zone.

Government Code section 56668(q) authorizes the Commission to consider maps that identify land as a very high fire hazard zone. The project site is located in and completely surrounded by a very high fire hazard severity zone, according to a map prepared by the State Fire Marshal. The Commission finds that the proposed annexation risks the property and lives of residents of future development in the annexation area and increases the threat of fire for existing adjacent neighborhoods in Clayton.

PASSED AND ADOPTED on August 12, 2026, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Gabriel Quinto, CHAIR, CONTRA COSTA LAFCO

I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated.

Dated: August 12, 2026

Lou Ann Texeira, Executive Officer