

# AGENDA REPORT



Meeting Date: \_\_\_\_\_  
Agenda Item # \_\_\_\_\_  
City Manager Approval:

**TO: Honorable Mayor and Members of the City Council**

**FROM: CITY ATTORNEY**

**SUBJECT: RESCISSION OF WAL-MART SUPERCENTER APPROVALS. CONSIDER ADOPTION OF RESOLUTION NO. 26-2008; RESCINDING APPROVALS FOR THE WAL-MART SUPERCENTER AND RESCINDING RESOLUTIONS 70-2006, 71-2006, AND 72-2006 (IN PART). WAIVE THE FIRST READING AND INTRODUCE ORDINANCE NO. 986, AN ORDINANCE WHICH RESCINDS ORDINANCE NO. 967.**

## **RECOMMENDED COUNCIL ACTION:**

1. Adoption of Resolution No. 26-2008, rescinding approvals for the Wal-Mart Supercenter and rescinding Resolution Nos. 70-2006, 71-2006, and 72-2006 (in part). The Resolution includes introduction of Ordinance No. 986, which upon final adoption would rescind Ordinance No. 967.

## **SUMMARY:**

Rescission of the approvals for the Wal-Mart Supercenter were recently ordered by the Tehama County Superior Court. The proposed Resolution and Ordinance would rescind the prior approvals.

## **PREVIOUS COUNCIL ACTION:**

At the City Council meeting conducted on November 13, 2006, the Red Bluff City Council approved certain land use entitlements for the project known as the Red Bluff Wal-Mart Supercenter, through the adoption of Resolution Nos. 70-2006, 71-2006 and 72-2006. In addition, an amendment to the Red Bluff Zoning Code was affected through the adoption of Ordinance No. 967.

## **DISCUSSION:**

Petitioners Citizens for a Healthy Community, Frank McCaughey, Wilkie Talbert, Mary Anker, Shirley Avila and Clarice Meyer (together "Petitioners")

filed a lawsuit challenging the approvals for the Wal-Mart Supercenter project on various grounds, including alleged defects in the Environmental Impact Report certified for the project. On or about March 25, 2008, the Tehama County Superior Court issued an order granting, in part, Petitioners' request for a Peremptory Writ of Mandate, and requiring that the City set aside the approvals for the Wal-Mart Supercenter Project and conduct certain additional environmental analysis in compliance with the Court's order. The Court specifically exempted from its rescission requirement the previously approved tentative parcel map (TPM-04-12). The tentative parcel map has since recorded as final, and real property has transferred in reliance thereon.

Adoption of the proposed Resolution would rescind the Wal-Mart Supercenter approvals. In addition, the proposed Resolution would introduce Ordinance No. 986, and waive its first reading. This Ordinance would rescind prior Ordinance No. 967. After adoption of this Ordinance, the Zoning Code would return to its original status prior to approval of the Wal-Mart Supercenter Project.

**CITY FISCAL IMPACT:**

None. The City's Conditions of Approval for the Project require that Wal-Mart enter into a defense and indemnity agreement with the City. Accordingly, Wal-Mart will continue to bear all of the City's attorney's fees and costs associated with compliance with the Court's order. At a subsequent City Council meeting, staff will present a proposed contract for additional environmental impact analysis in order to comply with the Court's order. That additional work will also be funded by Wal-Mart.

Respectfully submitted,

Richard L. Crabtree  
City Attorney

**ATTACHMENTS:**

- A. Proposed Resolution No. 26-2008
- B. Proposed Ordinance No. 986

**CITY OF RED BLUFF  
CITY COUNCIL RESOLUTION NO. 26-2008**

**RESCINDING APPROVALS FOR THE WAL-MART SUPERCENTER  
PROJECT, AND  
RESCINDING RESOLUTIONS 70-2006, 71-2006, AND 72-2006 (IN  
PART)**

**WHEREAS**, at a City Council meeting conducted on November 13, 2006, the Red Bluff City Council approved certain land use entitlements for the project known as the Red Bluff Wal-Mart Supercenter, through its adoption of Resolution Nos. 70-2006, 71-2006, and 72-2006; and

**WHEREAS**, the approvals for the Red Bluff Wal-Mart Supercenter included certification of an Environmental Impact Report and the adoption of California Environmental Quality Act ("CEQA") findings related thereto; and

**WHEREAS**, on or about December 13, 2006, Petitioners Citizens for a Healthy Community, Frank McCaughey, Wilkie Talbert, Mary Anker, Shirley Avila and Clarice Meyer ("Petitioners") filed a lawsuit (known as Tehama County Superior Court Case No. 58342) challenging the approvals for the Wal-Mart Supercenter project on various grounds, including alleged defects in the Environmental Impact Report certified for the project; and

**WHEREAS**, on or about March 25, 2008, the Tehama County Superior Court issued an order granting, in part, Petitioners' request for a Peremptory Writ of Mandate, and entering judgment thereon; and

**WHEREAS**, the Peremptory Writ of Mandate issued by the Court requires that the City set aside certain approvals related to the Red Bluff Wal-Mart Supercenter; and

**WHEREAS**, the City Council desires to comply with the Court's order, and the City intends to conduct additional environmental analysis in compliance with the Court's order;

**NOW, THEREFORE, BE IT RESOLVED**, as follows:

1. That the foregoing recitals are true and correct.
2. THAT THE CITY COUNCIL hereby rescinds in its entirety Resolution No. 70-2006 Certifying The Final EIR for the Wal-Mart Supercenter project located at 608 Luther Road, Red Bluff,

California (State Clearinghouse Number 2004-012088) As Adequate And Complete With The Final Mitigation Monitoring Plan and Adopting The CEQA Findings Of Fact and Statement Of Overriding Considerations.

3. THAT THE CITY COUNCIL hereby rescinds in its entirety Resolution No. 71-2006, Approving The General Plan Land Use Amendment (GPA-03-002) and waiving the first reading and introducing Ordinance No. 967; Rezone No. 194, Rezoning Of The Zoning Map Of The City Of Red Bluff.
4. THAT THE CITY COUNCIL hereby rescinds, in part, Resolution No. 72-2006, approving Administrative Use Permit (AUP-03-007), Design Review (DRG-04-02-15), Parking Space Reduction (PCA-05-001), Tree Replacement Plan (TRP-04-02-15), with attached Conditions of Approval, Mitigation Measures, and Reduced Project Plans. Specifically exempted from this rescission is approval of tentative parcel map (TPM-04-12), consistent with the Superior Court's Peremptory Writ of Mandate which excludes the tentative map from rescission.
5. THAT THE CITY COUNCIL does hereby waive the first reading and introduce Ordinance No. 986 rescinding Ordinance No. 967.

The foregoing Resolution was passed and adopted at a regular meeting of the Red Bluff City Council held on **May 6, 2008** by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT OR NOT VOTING: Councilmembers:

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Dan Irving, MAYOR PRO TEM

ATTEST:

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Jo Anna Lopez, CITY CLERK

**ORDINANCE NO. 986**  
**AN ORDINANCE AMENDING SECTION 25-13 OF RED BLUFF CITY**  
**CODE**

**The City Council of the City of Red Bluff does ordain as follows:**  
**ARTICLE III: Establishment of Districts**

**Section 1.** Ordinance No. 967, adopted by the Red Bluff City Council on November 21, 2006, is hereby rescinded in its entirety.

**Section 2.** The relevant and effective portions of the Municipal Code of the City of Red Bluff, as well as the official zoning map, are hereby amended to remove the changes affected by the adoption of Ordinance No. 967, and shall be modified to their original state as they existed just prior to adoption of Ordinance No. 967.

**Section 3.** This ordinance shall be published in the manner provided in Section 36933 of the Government Code in the Red Bluff Daily News, a newspaper of general circulation printed and published in the City of Red Bluff and shall be effective 30 days after its passage. The foregoing ordinance was introduced at regular meeting of the Red Bluff City Council on May 6, 2008 and adopted at a regular meeting on May 20, 2008 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT OR NOT VOTING: Councilmembers:

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Forrest Flynn, Mayor

ATTEST: \_\_\_\_\_  
Jo Anna Lopez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard Crabtree, City Attorney