



"Village with a Past, City with a Future"

H-6

210 Fidalgo Avenue, Kenai, Alaska 99611-7794
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Memorandum

Date: October 4, 2006
To: Rick R. Koch, City Manager
From: Kim Howard, Assistant to the City Manager *KH*
RE: **Wal-Mart Lease Application – Request for Time Extension
Tract 1, Baron Park 2005 Replat**

The lease application submitted by Lounsbury & Associates, Inc. on behalf of Wal-Mart, will expire on October 28, 2006. Attached is their request for a six-month time extension.

KMC 21.10.040 states "The application shall expire twelve months after the application has been made if a lease has not been entered into between the City and the applicant by that time unless the City Council for good cause grants an extension. No extension may be granted for a period longer than six additional months."

Does Council wish to extend the lease application for an additional six months?

Attachment

/kh

Lounsbury & Associates, Inc.

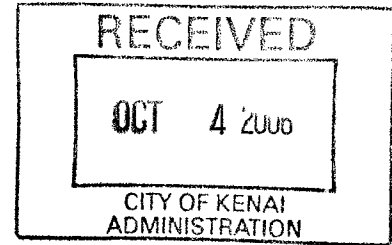
ESTABLISHED 1919

October 3, 2006

City of Kenai
210 Fidalgo Avenue
Kenai, Alaska 99611-7794

Attention: Rick Koch, City Manager

Regarding: **Wal-Mart Supercenter #4474-00, Kenai, AK**
Lease Application
Request for Time Extension



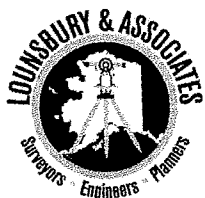
Mr. Koch:

The Kenai City Council unanimously approved the lease application for development of a Wal-Mart Supercenter in Kenai at its December 7, 2005, meeting. In March 2006, Council passed an ordinance (No. 2149-2006) that stated lease applications expire after one year and may be extended for six additional months for good cause. We understand Wal-Mart's lease application expiration date is October 28, 2006. For the cause shown below, we respectfully request the lease application expiration date be extended for six months.

In 2005, the US Army Corps of Engineers (USACE) responded to City of Kenai's request for a Department of the Army (DA) wetland determination at Tract C, Baron Park #5 Subdivision (the Property). At that time, the USACE issued a preliminary jurisdictional determination (PJD) suggesting the Property might contain wetlands under the Corps' regulatory authority. Section 404 of the Clean Water Act requires that a DA permit be obtained for the placement or discharge of fill material into waters of the U.S., including wetlands.

As part of Wal-Mart's due diligence efforts, a wetland scientist from Shannon & Wilson (Lounsbury's subconsultant) visited the Property in early June 2006 to identify and delineate the potential wetland and upland areas. Based on the field delineation efforts, approximately 1.5-acres were identified as wetland. Subsequently, the delineation report and request for jurisdictional determination were submitted (7/6/06) to the Corps of Engineers. In late August, the Corps requested an adjustment to one of the delineation points along the eastern wetland boundary. Upon completing the adjustment, Shannon & Wilson submitted (9/11/06) an addendum to USACE; on September 25, the agency provided written response similar to that provided to the City in 2005. Since then, Shannon & Wilson sent correspondence to the Corps' requesting clarification of the PJD. Apparently, the Alaska District of the USACE cannot issue an approved jurisdictional determination because they are waiting for guidance from the USACE headquarters in response to the June 19, 2006, Rapanos/Carabell Supreme Court decision. A PJD is not subject to appeal.

Based upon the site plan submitted with the lease application and delineated wetlands, Wal-Mart must apply for a DA permit. The permitting process requires that Wal-Mart identify the least environmentally damaging practicable alternative. Assuming the City grants a time extension, we will prepare and submit the permit application for agency approval.



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Wal-Mart Supercenter #4474-00, Kenai, AK

October 3, 2006

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If you have any questions, please call my office directly at (907) 357-9132.

Sincerely,

Lounsbury & Associates, Inc.

A handwritten signature in black ink, appearing to read "Tom Adams", written over a horizontal line.

Tom Adams, P.E.

Project Manager

Cc: Roger Thompson, Wal-Mart Stores, Inc.
Steve Dyer, Wal-Mart Stores, Inc.
Chris McNichols, Gust Rosenfeld PLC
Greg Johnson, Bonds, Stephens & Johnson
Carey Graves, City of Kenai

File: 05-042.B.City of Kenai

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lounsbury & associates, inc.