# MEMORANDUM

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DATE: April 25, 2011

TO: Borough Assembly

FROM: Bruce Botelho, Mayor

SUBJECT: Marine Passenger Fees and Port Development Fees

During the course of the last months the assembly and its finance committee have discussed whether and how we should make use of monies received from cruise ship passengers. Recently, challenges to some proposed expenditures have been offered by members of the public and these, rightly, should be openly and forthrightly addressed.

In advance of this Wednesday's consideration of the CIP budget for FY 2012, I thought it might be helpful to review the fee structures we have in place, their historical context and my understanding of the applicable law. I do so in recognition that my remaining time on the assembly is limited and that I am the only member who participated in the early development of our fee structures.

**Historic cruising**

Cruise ship tourism of one sort or another has been part of Southeast Alaska's history for generations, frequently regarded as beginning with John Muir's 1879 visit, immediately before the discovery of gold in what became the Juneau Mining District.

Throughout the first half of the Twentieth Century, tourists travelled to Alaska primarily on vessels of the Alaska Steamship and Canadian Pacific steamship boats. By the mid-1960's, these companies had been supplanted by air travel and the Alaska Marine Highway system.

The evolution into cruising as we know it today occurred in the 1980's. Juneau itself began focusing on this potential market in the aftermath of a 1982 vote on a bond issue to finance the relocation of the capital. The city recognized the need to diversify and cruise ship tourism offered one attractive alternative. On its own, Juneau undertook the establishment of a downtown historic district and extensive reconstruction of streets and

sidewalks, hoping that these improvements would attract more cruise lines to call on Juneau.

Whether by coincidence or not, the cruise industry did expand its presence in Juneau and by the late 1980's the annual number of cruise passengers exceeded 200,000.

**1990 Enactment of a port dues structure**

As mayor in January 1989, I requested the assembly adopt an ordinance imposing a $5 marine passenger fee on each cruise ship passenger arriving in Juneau. Juneau's docks were old and could not sustain the volume of ship traffic, consisting of vessels five to ten times the size of those the docks had been built for. Revenue sharing and capital projects from the state to municipalities had fallen sharply since the 1985 recession. The burden of infrastructure development needed to be shifted to the industry that benefited from it.

The cruise industry opposed the imposition of a fee. However, over the course of the next thirteen months, hearings and negotiations between industry representatives and the city took place. And, in February 1990, (over industry opposition) the assembly unanimously enacted a "port dues" ordinance, Ord. 89-52. In the ordinance, the assembly made several findings, among them, that "the establishment of port dues is necessary and appropriate in order to fund capital acquisitions and improvements to the city and borough's port facilities for the use and benefit of the cruise ship industry."

The port dues structure assessed vessels based on their tonnage, with the receipts used to finance specific dock improvements proposed in a General Obligation bond package approved by the voters in 1991. The rate began at $.05 a ton and was readjusted annually. [1]

**The Marine Passenger fee**

In 1999, City and Borough of Juneau voters passed Proposition 1, assessing a fee of $5 per cruise ship passenger. The proposition, embodied in CBJ 69.20, directed that the fees be placed in a marine passenger fund, from which appropriations were to be made to "address the impacts caused by the marine passenger ship industry." Permissible expenditures included:

(1) Design, construction, operation, or maintenance of capital improvements to relieve impacts of marine passenger ships and marine passengers;

(2) Operating funds for personnel, training, commodities, rentals, services and equipment for services provided, made available to, or required as a result of marine passenger ships and marine passengers;

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[1] Two other features of the ordinance are noteworthy. The first was creation of a port development plan that served as the basis for the 1991 GO bond issue. The second was the creation of a port advisory committee whose primary responsibility was to comment on the port development plan and adjustments to all port fees.

(3) Projects and programs that promote safety, environmental improvements, or enforcement of laws caused or required by marine passenger ships and marine passengers;

(4) Acquisition of land required to execute the activities listed in this section;

(5) Beautification and enhancement of the facilities listed in subsections (a)(1)—(a)(4) of this section;

(6) Surveys, analyses, polls, plans, monitoring, and similar efforts to measure, describe or predict, or manage the impacts of marine passenger ships and marine passengers, for items listed in subsections (a)(1)—(a)(5) of this section.

In 2008, the Assembly amended the ordinance's process for soliciting and deciding projects, but did not alter the list of permissible expenditures. Ord. 2008-07.

**The Port Development fee**

In January 2002, the port dues ordinance, Ord. 89-52, expired. In April 2002, the assembly adopted Res. 2150, "a Resolution Imposing Port Dues on Vessels Carrying Passengers for Hire." In doing so, the assembly determined that "it is appropriate to implement a replacement that assures better planning, improved community and business partnerships, and the development of broadly supported waterfront improvements".

Despite the title of the resolution, the fee was to be denominated a "port development fee". The initial rate was $1.73 per passenger. Monies were to be used to partially fund Phase I of the Steamship Wharf/Marine Park project, a comprehensive waterfront plan "addressing the area from the Douglas Bridge to the Little Rock Dump", and a feasibility study and preliminary design of a dock extension. The fee was to be collected through December 31, 2005.

The port development fee was the subject of several subsequent resolutions:

1) Resolution 2163 (July 2, 2002), increasing the fee to $2;

2) Resolution 2294b am (March 14, 2005), which increased the fee to $3 and which, in addition to projects addressed in Res. 2150, directed funds to implement waterfront development projects identified in the then-recently-adopted Long-Range Waterfront Plan; The assembly specifically found that the primary user of the downtown waterfront facilities was the cruise line industry and that the safety and efficiency of interstate and foreign commerce would be enhanced by planning, designing, and constructing facilities outlined in the plan;[2]

[2] Ord. 2005-02 (imposing market rate port dues on vessels carrying passengers for compensation) was adopted at the same time. It authorized a port tonnage fee on vessels calling at the Port of Juneau, but it has not been implemented.

3) Resolution 2423(b) am (January 7, 2008), which extended the port development fee until January 2011; and

4) Resolution 2552 (November 29, 2010), which repealed the sunset provision.

**Other topics bearing on Marine Passenger and Port Development fees**

**a. State Commercial Passenger Vessel Excise Tax (CPV)**

In August 2006, a voter-approved initiative established the commercial passenger vessel excise tax, popularly known as a "head tax", of $50 per person disembarking from cruise ships in an Alaska port. Monies were placed into the CPV tax account and were then appropriated annually by the legislature under a formula set forth in the initiative. The initiative's findings included a determination that "the State of Alaska and local governments. . . incur significant costs related to health, safety and other social activities and obligations. These passengers should also contribute their fair share to the costs of the general government of the State of Alaska. . ."

At Governor Parnell's urging, the legislature modified the CPV in the 2010 session, effectively reducing the tax to $34.50 per passenger. Two features were of specific benefit to the City and Borough of Juneau. First, it would receive $5 per passenger. Second, doing so would not be conditioned on repeal of its own marine passenger fee or port development fee.

**b. The Long Range Waterfront Plan**

As I noted above, one of the uses of the port development fee was to be the completion of a long-range waterfront development plan. After two years of public hearings and preliminary work, the assembly adopted its plan in November 2004 (Ordinance 2004-40). The plan, with a 20-year horizon, embodied the assembly's systematic approach to development of the Port of Juneau.[3] Among its "key organizing elements and themes" were "cruise facility growth" and "expanded transportation mode choice".

The plan specifically contemplates the reconstruction of CBJ's docks to accommodate two, 1,000 foot cruise vessels, sets forth considerations for additional berthing, and identifies alternatives near Gold Creek to achieve that result.

[3] The Port of Juneau encompasses those facilities located on the downtown waterfront, including the ferry terminal and lightering docks, which are not included under the term "boat harbor" and which are used for commercial purposes related to marine shipping, transportation, and tourism. CBJ 85.05.010

### c. Expenditures from the two city fee structures

Over the course of the period 1990 – 2008 there was another nearly five-fold increase in the number of passengers arriving in Juneau.[4] The volume of visitors and the size of the vessels calling on Juneau both brought major challenges and opportunities to Juneau. Floatplane and, later helicopter, operations, crowding of pedestrians on Juneau streets, bus congestion, air and water quality, and adequacy of docks were all issues successive assemblies have tried to address responsibly.

The fees have been essential in building and maintaining basic infrastructure for nearly-one-million visitors who arrive by cruise ship into the Port of Juneau each year and in partially off-setting the impact of these visitors on municipal government services.

Not including the initial port dues regime, the CBJ has expended $14,776,800 in port development fees on port infrastructure maintenance and construction. The CBJ has expended an additional $22,239,000 on Port of Juneau capital projects from marine passenger proceeds.[5]

## Applicable Legal Standards

From the outset, successive assemblies have been conscious of, and conscientious about, complying with federal, state and local laws respecting use of the monies collected from port dues, port development and marine passenger fees. Nevertheless, our application of these standards has evolved, becoming increasingly sophisticated because of greater awareness on the part of assembly members, vigilance by city management and the public and constantly developing case law. This iterative process will continue.[6]

What we all know is that, in addition to complying with our own ordinances, each proposed expenditure must satisfy every federal and state standard in order to be lawful. Here is my cursory outline of these standards, along with my thoughts on their application:

### a. Federal constitutional constraints

The "dormant" Commerce Clause. The United States Constitution authorizes Congress to regulate "Commerce with foreign Nations, and among the several States, and with the Indian Tribes". Art. I, sec. 8, cl. 3 U.S. Const. This explicit grant of authority to Congress has a converse implicit prohibition known as the "dormant" Commerce Clause which bars states from passing legislation that improperly burdens or discriminates against interstate commerce, even when there is no conflicting federal statute.

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[4] The number of passengers arriving in Juneau declined after that point from a high in 2008 of 969,354 visitors, 962,573 in 2009, and 825,916 in 2010 to an anticipated 816,188 visitors this summer, attributed variously to a national recession and to the imposition of the statewide passenger fee discussed above.

[5] Approximately $30 million has been expended on "operations" which has ranged from general support ($14,063,900), shoreside power ($3 million), to the seasonal EMS Transport program ($480,000) and crossing guards ($991,000).

[6] I will have recommendations to make in this regard later this year.

The United States Supreme Court has established a three-pronged test to determine whether a state (or local) fee imposed on interstate commerce to pay for facilities used in part by those engaged in interstate commerce is "reasonable" [constitutional]. It is permissible only if it

(1) is based on some fair approximation of use of the facilities,

(2) is not excessive in relation to the benefits conferred, and

(3) does not discriminate against interstate commerce.

*Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355, at 369 (1994).

The Tonnage Clause. Article I, section 10 of the United States Constitution declares that "[n]o State shall, without the Consent of Congress, lay any Duty of Tonnage." The Supreme Court has interpreted the clause to apply to "all taxes and duties regardless of their name or form, and even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in a port." *Clyde Mallory Lines v. Alabama ex rel. State Docks Comm'n.*, 296 U.S. 261, at 265-66 (1935).

Two years ago, the Supreme Court was presented with a challenge to the City of Valdez's imposition of a property tax on large vessels docking at its ports. While striking down the tax, the Court noted: ". . .[N]othing in the history of the adoption of the Clause, the purpose of the Clause, or this Court's interpretation of the Clause suggests that it operates as a ban on *any and all* taxes which fall on vessels that use a State's port, harbor, or other waterways." *Polar Tankers Inc. v. City of Valdez, Alaska,* 129 S.Ct. 2277, at 2283 (2009).

Most pernicious about the tax, not an issue with respect to our own fees, was that it was intended to raise money for general municipal services, it was uniquely targeted at large vessels rather than to any other form of non-affixed personal property, and it was not related to services provided to the vessel.

**b. Federal statutory constraints**

Language in the Maritime Transportation Security Act of 2002 amended 33 U.S.C. 5 by adding a new subsection (b) that provides in pertinent part:

> No taxes, tolls, operating charges, fees . . . shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew . . . except for . . . reasonable fees charged on a fair and equitable basis that - (A) are used solely to pay the cost of a service to the vessel or water craft; (B) enhance the safety and efficiency of interstate and foreign commerce; and (C) do not impose more than a small burden on interstate or foreign commerce.

In *State v. Alaska Riverways, Inc.*, 232 P.3d 1203, 1222 (Alaska 2010), the Alaska Supreme Court noted that this section was a codification of the common law concerning the constitutional constraints discussed above.

What is the service we provide? It is rendering the Port of Juneau able to receive passenger ships of current and anticipated capacity into its harbor, permit their passengers and crew to cross our docks, and enter the community, whether on foot, by water taxi or motorized terrestrial vehicle, safely and efficiently. And, when I refer to "our docks", I mean to include those that have been privately developed. Our responsibility to passengers and crew who visit Juneau does not end at a property line. On the other hand, how and in what manner that responsibility is fulfilled will vary, based in part on the ownership of any specific facility within the Port of Juneau

It is my view of the service we provide that makes me uncomfortable with expenditures outside of the Port of Juneau. For that reason, I have been particularly wary of the use of marine passenger fees for the airport. Use of funds for Statter Harbor presents a much closer question for me, even though it is geographically more remote from the Port of Juneau than the airport. It is because the facilities that are proposed to be constructed are almost exclusively for the use and benefit of marine passengers who disembark in the Port. A court could conclude that it is an appropriate expenditure.

**c. State constitutional constraints**

Public Purpose Requirement. Article IX, section 6 of the Alaska Constitution reads:

> No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

This provision enters our discussion because of proposed expenditures to dock facilities that are privately owned. The Alaska Supreme Court has applied this provision on several occasions. A case that structurally bears some resemblance to the situation presented here is *Weber v. Kenai Peninsula Borough,* 990 P.2d 611 (Alaska 1999).

In 1993, certain property owners petitioned the borough to form a utility special assessment district to finance a gas line extension to their area. The extension was to be constructed and owned by Enstar. Once the extension was completed that year, the borough confirmed the assessment roll and set the amount each property owner within the district was to pay. Weber (the successor to the original property owner who protested) challenged the assessment as violative of the public purpose requirement, claiming that it benefited only Enstar. That was because Enstar would receive all of the assessment proceeds and, in the end, would own and operate the gas line.

In *Weber* the Alaska Supreme Court concluded: "The issue turns not on who is being paid but on what will be provided." In doing so the court relied on an

earlier U.S. Supreme Court pronouncement[7] and its own early decision in *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963) ". . .[T]he test of whether a public purpose is being served does not depend on the . . . nature of the [entity] that will operate the . . . property, but upon the character of the use to which the property will be put."[8]

I have struggled with the applicability of the public purpose section to the Port of Juneau. I specifically opposed use of the marine passenger fee proceeds to fund shoreside power. What troubled me most was the manner in which the project was put together. Two private entities entered into a contract for shoreside power that included provisions for the financing of the project and then, six months later, successfully requested that the assembly pay for the project from marine passenger fee proceeds instead. Under *Weber* the expenditures fulfilled the public purpose requirement.

Senator Elton Engstrom, and Mssrs. Chip Thoma and Joseph Geldhof have each expressed their concern about expenditures proposed for the A.J. Juneau Dock and Franklin Dock. None has argued that there should be an absolute bar to expenditures at the private docks.

Senator Engstrom's objection is that:

> The Franklin Dock and A.J. Dock have contracts that give them profit for their enterprises which should include provision for repair and depreciation, if properly drafted. Both of the aforementioned docks are private entities with no open access for the Juneau public. These are structures that are only used for the benefit of the dock company and a cruise line. . . To give them a share of the head tax would be a gift which is not expected or deserved.

(undated; presented to the assembly in early April 2011)

Mr. Thoma lauded the proposal to fund a grey water connection from the AJ Juneau Dock to the Thane treatment plant. On the other hand, he has challenged the navigation hazard study, declaring that "Private entities should do their own business and capital improvement planning, not the CBJ." (April 11, 2011).

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[7] "The test of the public character of an improvement is the use to which it is to be put, not the person by whom it is to be operated." *Milheim v. Moffat Tunnel Improvement District*, 262 U.S. 710 (1923).

[8] Another Alaska Supreme Court case, *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970) is also instructive. Here the court approved a bond issue intended to entice a business into Palmer over the objection that the benefit accrued to the business entity. The court noted that: "There are dangers that an industry locating in a community may end up dominating the political and economic processes. On the other hand, it is recognized that the location of an industry in a particular community may have widespread economic benefits and that these do fulfill the public purpose and the general welfare of the community, broadly conceived". *Ibid* at 330-31. The court further observed: "The benefits from the plan of the City of Palmer may be enjoyed in part by some individuals more than by others. But collective advantages to the community at large can be perceived quite readily." *Id.* at 331

Mr. Geldhof observed that ". . . the CBJ has the ability to make payment to the private docks and other private entities so long as the public obtains some value from the transaction." He objected to many of the proposed expenditures, however, as "nothing more than a subsidy by the public to private enterprise entities for what is essentially routine maintenance or property upgrades." (April 11, 2011).

Legal representatives of the Franklin Dock Co. and A.J. Dock Co., on the other hand, have argued that:

> To absorb the fees collected from vessels calling at the private docks (and to comply with federal law). . . the CBJ will need to make substantial additional appropriations for projects to maintain the docks at the high standard necessary to continue attracting cruise business (and related economic activity) to Juneau.

Stephen Rummage and Rebecca Francis (December 7, 2010)

While supporting projects proposed for the private docks, Mr. Bob Stone, chairman of the Alaska Cruise Association has challenged the decision to expand the downtown public docks, in part because "that project will not benefit the passengers who would be paying the fees to defray the costs, thus running afoul of federal law. (Indeed, most of those passengers do not even call at the public docks)." In his letter to me, dated January 11, 2011, he continued: "The industry also has serious concerns regarding the seawalk and other components of the Long-Range Waterfront Plan."

I appreciate Mr. Stone's focus on the Long-Range Waterfront Plan because it is for me the linchpin of our approach to the imposition and expenditure of our fees. The plan views the Port of Juneau as an integrated area, intended to service vessels, their passengers and crew in a way that is safe and efficient, but also with amenities that benefit these visitors and residents alike. The fees are a partial offset to the costs associated with the infrastructure and governmental services provided and in mitigation of the impacts that a million and a half people, both passengers and crew, bring in a four month period to a community of 31,000.

Any given year is a snapshot in time. Discrete projects may be concentrated in one part of the Port in one year, in another in a second year, and so on. At the end of the planning horizon, however—and with modifications as time goes on—the Port will have been fully developed and will have enhanced both the safety of vessel, passengers and crew and their efficient movement along and through the waterfront.

I agree with Mr. Rummage and Ms. Francis that we do need to maintain both public and private docks "at the high standard necessary to continue attracting cruise business (and related economic activity) to Juneau." For that reason, I can support funding for projects at the private docks. In the first instance, however, I leave it to the manager to evaluate all proposals for expenditures of the marine passenger fee proceeds and to recommend those that he concludes are most justified.

There are two residual questions from this discussion: (1) what, more specifically, can we spend the fees on? And, (2) must all fees collected from passengers disembarking at the private docks be used exclusively at the private docks?

There is no magic list that allows us to definitively say which projects qualify and which do not. However, the Second Circuit Court of Appeals decision in *Bridgeport and Port Jefferson Steamboat Co. v. Bridgeport Port Authority*, 567 F.3d 79 (2d Cir. 2009), is instructive. The port authority, established by the City of Bridgeport, CT, included lands 1,000 feet inland from the waterways of Bridgeport and Black Rock Harbors as well as certain lands outside of it. It also encompassed a dry shipping terminal, a site of a former major steel complex and a shipyard. The ferry company docked at the authority's facilities. The authority imposed a passenger fee on ferry passengers from which virtually all of its operations were funded. The court affirmed a lower court decision enjoining the collection of a passenger wharfage fee until the fee was revised. Specifically, it approved of the district's court's segregation of permissible and impermissible uses of the fee proceeds. I highlight here some of the markers that should help us in making our own expenditure decisions:

- "The Port District . . . includes many projects beyond the Dock that are not functionally related to the ferry operation, and are not intended to benefit the travelers on ferries or to facilitate their boat travel from Connecticut to Long Island."

- "The Court concluded that the following BPA activities benefitted ferry passengers: (1) construction and maintenance of a new ferry terminal building, (2) repair of the bulkhead of the Dock, (3) construction of the access road, (4) planning of the parking facility for ferry passengers, (5) security for the Dock, and (6) daily operations related to the ferry."

- "A user fee. . . may reasonably support the budget of a governmental unit that operates facilities that bear at least a 'functional relationship' to facilities used by the fee payers."

I do not believe that we are required to expend all monies collected from passengers disembarking at the private dock facilities only on those facilities. I essentially agree with Senator Engstrom's observation that "[t]he Franklin Dock and A.J. Dock are not the nexus of the taxable event supporting the passenger charge. The basis is the vessel being in the waters adjacent to the city of Juneau." The fees are used for improvements to the Port of Juneau, of which the private facilities are merely a part.

Two airline cases discussed in *Bridgeport* above make clear that there is no requirement that "the amount of a user fee must be precisely calibrated to the use that a party makes of Government services."

In *Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.*, 405 U.S. 707 (1972), respondents challenged a "use and service charge" of $1 "for each passenger enplaning any commercial aircraft operated from the Dress Memorial Airport" in

Evansville, Indiana. The funds were to be used for the improvement and maintenance of the airport. The Supreme Court upheld the fee. Among its conclusions:

- A charge designed to make the user of state-provided facilities pay a reasonable fee for their construction and maintenance may constitutionally be imposed on interstate and intrastate users alike.

- Although not all users of the airport facilities are subject to the fees, and there are distinctions among different classes of passengers and aircraft, the charges reflect a fair, albeit imperfect, approximation of the use of the facilities by those for whose benefit they are imposed, and the exemptions are not wholly unreasonable.

In *Alamo Rent-a-Car, Inc. V. Sarasota-Manatee-Airport Authority*, 906 F.2d 516 (11th Cir. 1990), the rental car agency was the only one of six agencies located off the airport premises. It was assessed a ten percent fee to the airport authority, but prohibited from soliciting business in the airport and from picking up passengers who lacked a reservation. The on-site agencies also paid the fee, but were otherwise unrestricted. It challenged the imposition of the user fee, relying on the *Evansville* case above that the fee must "reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed." The agency said that the only use it made of the airport was to drive on the airport roads in order to pick up passengers. For that reason it should be limited only to a "pro rata road use fee".

The circuit court upheld the fee. Among its observations were

- ". . .[T]he 'benefit conferred' language of [*Evansville*] suggests that a broad construction of use is appropriate where the benefit derived by the user depends on the existence of the entire government-provided facility."

- "Alamo argues that the Authority can only 'recoup' expenditures, thus implying that the Authority is restricted to seeking reimbursement for funds already expended to build and maintain the airport facility, and that the Authority is forbidden from levying a fee to fund future development. . . [W]e believe that given the long term nature of maintaining and developing an airport, it was appropriate for the Authority to factor in future development plans when setting user fees. To ignore the future expense of developing and expanding the airport to meet increased demands, would increase rather than mitigate burdens on interstate commerce. . ."

A third case, decided three weeks ago, *Cohen v. Rhode Island Turnpike and Bridge Authority*, 2011 WL 1319541 (D. Rhode Is. 2011), involved a class-action challenge to, among other things, the turnpike and bridge authority's (RITBA) use of tolls collected on one bridge to be used for maintenance and improvements on another, non-toll bridge. Here the plaintiff argued that because RITBA used some of the toll monies collected at the tolled-bridge to maintain the other, the toll was not based on a fair approximation of the use of the tolled-bridge.

RITBA countered that there was a "functional relationship" between the two bridges, the presence of the second bridge helping to alleviate the traffic that would exist on the tolled-bridge in its absence. The district court concluded that

> This Court is not required to measure the strength of this functional relationship or the precise extent of added congestion that closing the Mount Hope Bridge would produce. . . To defeat [plaintiff's] argument, all that must be shown is some functional relationship between the two bridges.

The conclusion that I draw from these cases is that fees collected from passengers disembarking at the private docks need not be expended solely at those facilities, that the fees may be used to support discrete projects within the Long-Range Waterfront Plan and that their use for construction of public dock facilities would be permissible because of the functional relationship existing between the facilities.[9]

**Where do we go from here?**

The Finance Committee did not act on the Capital Improvements Program budget set forth in Resolution 2571 at its April 13, 2011 meeting because of concerns about projects funded by the marine passenger proceeds, even though the committee had independently forwarded the Marine Passenger Fee funding recommendations to the assembly at its April 6, 2011 meeting without objection.

I propose that we move forward at our special Assembly meeting on Wednesday in the following manner:

1) We should pull Resolution 2571 "A Resolution Adopting the CBJ CIP for FY 2012 Through 2017" from the consent agenda and move it to the bottom of the agenda.

2) Once we reach Resolution 2571, I will ask to suspend the rules in order to decide "by exception" projects to be considered. Specifically, I ask that we:

   a) determine whether there are any non-marine passenger fee projects to which there is objection and decide these;

   b) determine whether there are any marine passenger fee projects to which there is objection and decide these;

   c) determine the distribution of any disapproved funds ( for example, directing remaining monies to the seawalk, Statter Harbor, or other projects that did not make the manager's list); and

   d) formally act on Resolution 2571 and on dispositions of the marine passenger fee proceeds.

[9] I reiterate that I believe it is permissible to expend monies on the private dock facilities and that it is advisable to do so where the result will be to enhance safety, efficient movement of passengers and crew and help standardize high quality infrastructure throughout the Port of Juneau.