



February 15, 2016

Kim Kiefer
City Manager, CBJ
155 S. Seward Street
Juneau, AK 99801

RE: Opposition to Draft FY17 Passenger Fee Proceeds Recommendations

Dear Ms. Kiefer:

I am writing to oppose a number of the FY 2017 proposed passenger fee recommendations. As we have indicated in the past, we do not believe the CBJ is applying the correct standard when evaluating passenger fee funded proposals.

In the 2002 Marine Transportation Security Act, Congress prohibited state and local governments from collecting any "taxes, tolls, operating charges, fees, or any other impositions . . . from any vessel or other water craft [operating in navigable waters], or from its passengers or crew," 33 U.S.C. § 5(b). Congress then carved out a narrow class of user fees from this prohibition, allowing "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 watercraft; (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."

Section 5(b) carefully sets forth the requirements for a permissible fee in **conjunctive**, not disjunctive language. Thus, federal law preempts a fee assessed on a vessel or its passengers if it runs afoul of just one of the statutory requirements. In addition to this express statutory bar on proposed uses of passenger fees, there are also constitutional limitations against these uses that arise from the Tonnage, Commerce and Supremacy Clauses of the federal Constitution. Regardless of the language in the CBJ's local ordinance establishing passenger fee use, CBJ projects must comply with federal law.

In reviewing the long list of proposed projects, many do not meet the federal test. For example, the CBJ continues to allocate \$1.4 million for government operations. We appreciate the impacts our passengers have on the local community and submit that the CBJ collects substantial sales taxes from visitors to help fund those impacts. Government operations are not services provided solely to the vessel from which the tax was collected. There are also numerous other examples in the FY17 list including the hospital, bus service, and the substantial amount requested for Front Street and Franklin Street Reconstruction. In fact, we believe very few of the proposed projects meet the federal test.

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Prior to forwarding a final recommended list to the Assembly, I request you reevaluate the list and remove all projects which do not comply with federal law. In addition, we would appreciate the removal of any reference to North West Cruise Ship Association in the project description for "Identified Government Operations." The industry has long opposed the full cost analysis formula although this language implies the opposite. Please indicate in the document that we have consistently opposed the formula.

Thank you for your consideration.

Respectfully,

A handwritten signature in cursive script, appearing to read "John Binkley".

John Binkley
President

Cruise Lines International Association ALASKA

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