



February 29, 2016

Mayor Mary Becker  
City and Borough of Juneau  
155 S. Seward St.  
Juneau, AK 99801

Subject: Bid Award for Seawalk – Bridge to Gold Creek, Phase 2

Dear Mayor Becker:

The Assembly is scheduled to consider bid awards at tonight's meeting, including the sole bid for the Seawalk – Bridge to Gold Creek, Phase 2. I strongly recommend the Assembly not approve the City Manager's recommendation to award \$4 million to this project.

I have previously communicated our concern to the City Manager and testified to the Assembly, our viewpoint that utilizing passenger fees for the bridge park project is not consistent with federal law.

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.

Clearly, the construction of an island and seawalk a great distance from the ships is not a service to the vessel and runs afoul of federal and constitutional law. In addition to legal issues, spending \$4 million to construct an island and seawalk, especially during these challenging economic times, does not seem to be a responsible action.

In the view of our member lines, the bridge to Gold Creek seawalk and island project is not a

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priority and recommend you not approve the award of the bid. However, if the project does move forward, I respectfully suggest you identify an alternative and more appropriate funding source. If the project is truly a high priority for the community, sales taxes, including those generated from cruise passengers, could be a potential funding source that would not conflict with state or federal law.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Binkley", is written over a light-colored, textured background.

John Binkley  
President

CC: City & Borough of Juneau Assembly Members

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December 22, 2015

Kimberly A. Kiefer  
City Manager  
City and Borough of Juneau  
155 S. Seward St.  
Juneau, AK 99801

Dear Ms. Kiefer,

We have previously communicated our concern to you, and testified to the Assembly, our viewpoint that utilizing passenger fees for the bridge park project is not consistent with federal law. We understand the Assembly has concurred with your recommendation to award the bid for Phase 1 to McG Constructors, Inc. in the amount of \$2,550,185.00. While the supporting documentation did not identify a funding source, it is our understanding that the CBJ is proceeding with the intention to fund Phase 1, and future Phases, with passenger fees. Given the Assembly's action at the December 21, 2015 meeting, I felt it was important to reiterate our concern prior to the actual contract award.

I respectfully suggest you identify an alternative and more appropriate funding source prior to finalizing the contract, and obligate the CBJ to fund the bid amount of \$2.55 million. If the project is truly a high priority for the community, sales taxes – including those generated from cruise passengers – could be a potential funding source that would not conflict with state or federal law.

Sincerely,

John Binkley  
President  
CLIA Alaska

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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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