



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

Cruise Lines International Association ALASKA

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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 black ink that reads "John Binkley". The signature is fluid and cursive.

John Binkley
President

CC: City & Borough of Juneau Assembly Members

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