



# Memorandum

**TO:** RULES COMMITTEE

**FROM:** Betsy Shotwell

**SUBJECT:** SEE BELOW

**DATE:** April 3, 2006

Approved

*Deanna Santana*

Date

*3/4/06*

**SUBJECT: UPDATE ON SAN JOSE FEDERAL RELATIONS ACTIVITIES**

## RECOMMENDATION

Acceptance of the attached report from the City's Federal lobbyist firm of Patton Boggs, LLP, in Washington, D. C.

## BACKGROUND

The firm of Patton Boggs, LLP is providing the attached update on their lobbyist activities on behalf of the City in Washington, D.C. This activity supports the City's advocacy and education in promoting our federal legislative priorities.

## ANALYSIS

The attached report describes in detail Patton Boggs various activities including, but not limited to: the City's interests regarding the FY 2007 federal budget and appropriations process; legislative activities; advocacy efforts including the preservation of the Community Development Block Grant program and assistance with the City's official trips to Washington D.C.

## COORDINATION

This report was coordinated with our Washington, D.C. lobbyist firm of Patton Boggs, LLP.

*Betsy Shotwell*

BETSY SHOTWELL

Director, Intergovernmental Relations

Attachment

## MEMORANDUM

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**To:** City of San José  
**From:** Patton Boggs LLP  
**Date:** March 31, 2006  
**Subject:** Update on San José Federal Relations Activities – First Quarter 2006

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This memorandum highlights recent Patton Boggs federal relations work on behalf of the City of San José. Specifically, the report reviews activities related to –

- federal lobbying visits organized for City officials;
- FY2007 appropriations agenda;
- Difficult to Develop Area designation;
- housing programs and policy;
- community development / CDBG;
- eminent domain;
- telecommunications reform;
- homeland security; and
- other federal legislative and grant opportunity assistance.

### Federal Lobbying Visits by San José Officials

In order to advance the City's FY2007 funding and policy agendas, we helped to organize two advocacy trips for Mayor Gonzales – one in January coordinated with the U.S. Conference of Mayors Annual Meeting, and the other in March coinciding with San José receiving the Partnership for Livable Cities' Entrepreneurial American Leadership award for affordable housing initiatives.

Primary objectives of the January visit were to address issues involving the Silicon Valley BART Extension project, as well as other policy concerns such as the loss of Difficult Development Area status, potential eminent domain restrictions, and telecommunications reform. VTA General Manager Michael Burns and Silicon Valley Manufacturing Group CEO Carl Guardino participated in the BART-related discussions. Although Congress had not yet reconvened for the next session and most Members were not in Washington at that time, the Mayor met personally with Minority Leader Pelosi, Senator Feinstein, and Representative Honda, and senior staff to the other Members of the San José delegation. He also met with Department of Transportation Chief of Staff John Flaherty.

For the associated USCM session, we worked with a few other major city representatives to develop and advance a special resolution taking an official USCM position on protection of local eminent domain powers, anticipating possible Senate action on the issue. We also facilitated the Mayor's involvement in a small dialogue session about advancing the work of National League of Cities Institute for Youth, Education and Families, along with mayors from Boston, Baton Rouge, Denver, Louisville, Indianapolis, Nashville, and Providence.

The March visit focused on advocating for the City's specific FY2007 appropriations requests, as well as follow-up on the loss of Difficult Development Area status and other housing topics. The Mayor met with Representatives Lofgren and Honda, and senior staff in the other four delegation offices. The Mayor reviewed the details of identified project priorities.

### FY2007 Appropriations and Funding Projects

Overall, the environment for annual federal appropriations is in flux this year in response to the recent Congressional scandals involving Representative Cunningham and lobbyist Jack Abramoff, and the resulting lobbying reform proposals that center on "earmarks" as sources of potential corruption and abuse. Both the House and Senate have developed legislative and administrative proposals for constraints appropriations. For example, the House Appropriators limited Members to submit a certain number of project requests for each appropriations bill. Other proposals include subjecting projects to a point of order and floor vote when inserted during conference negotiations, publicly identifying the Member who requested each funded project, or mandating that submitted requests be published in the Congressional Record.

Although it is uncertain which of these measures will be enacted, if any, the impact certainly will be greater substantive scrutiny applied to all project requests, and likely cuts in the number and amounts of funded projects. As a public entity responsible to the electorate and advancing well-justified projects with local investments and a federal nexus, San José projects should not be disadvantaged by any more intensive review of merit. However, the City would be impacted by the general reductions in project earmarks.

Working with City agency leads and congressional staff, we identified, developed, and advanced fourteen appropriations requests for consideration by various Members of the delegation, balancing

the identified City needs against criteria that address the changing appropriations environment. We vetted multiple concepts, prepared background papers and justifications, conducted briefings, and completed supplemental forms and letters as required.

These City requests encompassed a range of surface and air transportation, community facility, education, workforce development, human service / homeless, and public safety projects. We also will advocate, as needed, on behalf of water resource projects led by the Santa Clara Valley Water District and directly benefiting the City. In developing and advancing projects, we focused on partnerships with other local entities, such as community-based organizations and educational institutions, in order to access additional funding sources and leverage support from multiple interests.

Finally, we are working with the delegation and City staff to identify and pursue other resources outside of the annual appropriations process, such as reprogrammed funding, and competitive or discretionary grants. For example, the City is seeking federal assistance with the Blossom Hill / Monterey Pedestrian Overcrossing project, with \$2 million needed in the current fiscal year; in addition to seeking FY2007 appropriations, Senator Feinstein is working to immediately reassign previously appropriated and unused funds from another transportation project to the San José overcrossing. This funding source is both less speculative and could be accessed at least six months earlier than through the upcoming appropriations process.

### **Difficult to Develop Area Designation**

In conjunction with the San José Housing Department leads, we continued to address the loss of the metropolitan region designation as a "Difficult Development Area" (DDA) for affordable housing in the latest listing by U.S. Department of Housing and Urban Development (HUD). San Francisco and Nassau / Suffolk Counties (NY), are other high-cost areas that also lost the DDA designation.

The DDA designation affords a boost in the amount of Low Income Housing Tax Credit (LIHTC) financing available in the region. With the changes put forward by HUD, San José expects to experience about a 30% reduction in the equity available to finance affordable housing projects in the City. Had San José not been a DDA, its last three affordable housing developments would have lost over \$12 million, which equates to about 60 affordable units.

Analyses identified several flaws in HUD's current DDA methodology, which relies solely on Fair Market Rent comparisons. This data is easily accessible but does not capture the core high-cost area drivers identified for DDA consideration in the IRS Code (such as construction, land, and utility prices).

After initiating a coalition with the other similarly situated impacted areas, we are engaging with the Congressional interest in efforts to reinstate San José's DDA status through policy changes on the DDA criteria. Working with City staff, we prepared background policy papers and draft letters to HUD, identified alternative approaches to address the City's unique circumstances without

completely undermining the current HUD standard, and crafted possible report language for enactment in an upcoming bill.

### Other Housing Issues

Following on advocacy for the City's policy positions last year, we continue to engage regarding the status of Government-Supported Enterprise (GSE) reform bill impacting Fannie Mae and Freddie Mac. This bill is the only housing-related legislation likely to be passed this year, and could incorporate a new Affordable Housing Fund and new affordable housing lending goals, both expected to be helpful to creating affordable housing in San José. The House version of the bill (H.R. 1461) includes those provisions, but also contains a limitation to the Housing Trust Fund, which has caused even the most vocal supporters of the fund to recant support; language supplied by the Republican Study Committee modified the original housing trust fund portion of the bill, long sought by housing advocates, to disqualify nonprofits and affiliates from receiving housing fund money if they engaged in voter registration or other nonpartisan voter participation activities, or lobbying for certain groups. The Senate version of the bill (S. 190) does not contain a companion provision for a trust fund. The lack of housing trust fund in the Senate bill combined with the version in the House bill now unpalatable to the advocacy community make the creation of an affordable housing trust fund an unlikely prospect.

In addition, with the San José Housing Department, we are beginning to consider how to address the impacts of redefined Metropolitan Statistical Areas that broaden the region to include San Benito County, thereby reducing the overall median family income levels and median rents. These reductions will restrict effective utilization of affordable housing programs in San José and Santa Clara County by holding allowable project rents static and unable to adjust to continuing market rate increases in the City.

### Community Development / Community Development Block Grant (CDBG)

The President's Budget again proposes major reductions to the CDBG formula grant, funding the program at \$2.725 billion, a cut of nearly \$1 billion from FY2006 levels, while maintaining administration in HUD. We reiterated local impact and use information to members of the San José congressional delegation, who have been supportive of letters to the House and Senate Budget Committees and Appropriations Committees regarding fund CDBG at or above the FY 2006 level. We also continue to monitor and prepare for responses to the four substantive program changes outlined in the President's Budget, with specific legislative details forthcoming in the next few weeks. Most of these issues were previously forecasted -

- **Formula Change:** HUD intends to advance core formula distribution changes that target funding to "higher-need" communities, as outlined in its report released February 2005. No details are available yet, but the specific changes will be based on the four report options with modifications to weighting and definitions of in poverty, age of housing stock, and growth lag criteria. In addition, some current CDBG entitlement recipients may drop off the list. We will

not know the impact of the formula change on San José until formal legislation is brought forward, but based on prior formulas considered, we anticipate some marginal increases for the City with possible reductions for surrounding communities in the region.

- Program Consolidation: The proposed budget again eliminates set-asides within the CDBG formula program and other related programs such as Section 108 Loan Guarantees, Brownfields Economic Development Initiative, National Community Development Initiative, and Rural Housing and Economic Development.
- Competitive Incentive Fund: Comparable to the Strengthening America's Communities Initiatives (SACI) program proposal last year, the Administration proposes a new \$200 million competitive bonus fund for CDBG recipients that have demonstrated efficacy in using their formula grants, likely based on a Millennium Challenge Grant model.
- Performance Measures: HUD will seek to impose expanded performance measures, likely in cooperation with the Department of Commerce and its separate SACI program.

Although the proposal seems unlikely to be adopted this year, given the anticipated timing of the legislative submission and the compressed election schedule, it has greater standing than the last reform effort because it begins to divide the communities of interest into formula winners and losers, rather than unified opposition to overall program elimination and funding reductions. As was the case in FY2006, the lack of funding provided in the HUD agency budget will again create downward pressure on other program funding in order to accommodate the reinsertion of CDBG, unless Congress agrees to allocate more overall funding.

### Eminent Domain

We continued to monitor and interact with Congressional and agency interests regarding implementation of current Federal constraints on local eminent domain powers, and potential advancement of further legislation.

The House passed the very restrictive H.R. 4128 at the end of 2005, but the Senate did not act on that measure. Rather, the Senate compromised on inclusion of a temporary standard in the FY 2006 Transportation, Treasury, Housing and Urban development bill, requiring that federally-funded projects using eminent domain not "primarily" benefit private interests and mandating a General Accounting Office (GAO) report assessing current use of eminent domain nationwide.

In anticipation of possible action this year in the Senate Judiciary Committee, we consulted with staff regarding their early thoughts on crafting alternative eminent domain language that accommodates "blight" considerations. We also met with GAO and other representatives of large cities to provide input on the mandated study, including information on extensive State procedural and how San José has used eminent domain in a prudent fashion.

Finally, we consulted with HUD regarding their internal decisions on how to interpret eminent domain requests for housing and community development (CDBG) purposes under the FY2006 appropriations standard. While this may not impact planned City projects in the current year, it will serve as precedent for future administrative interpretations and guide Congressional action.

### Telecommunications Reform

As reforms to the Telecommunications Act continue to be debated and move slowly in House and Senate Committees, we provided local impact information and policy assessments regarding various proposals to Representative Eshoo and Senator Boxer, who sit on the committees with jurisdiction over the issue. We also are coordinating with a coalition of large California cities to consider the specific impacts on the State regulatory and fee tax regime, as well as exploring opportunities for joint messaging with other similarly situated large cities.

Although passage of a final telecommunications reform bill remains unlikely in this session of Congress, the incremental focus of bills under consideration remains establishing a national franchise for new entrants in the telephone companies providing video services, as well as allowing municipalities to facilitate provision of broadband services. Most recently, the House Committee leadership circulated a relatively partisan bill, with a hearing held in late March and potential mark-up in April. Senate Committee leadership have not developed any companion drafts, and no consideration is anticipated for another month or two.

The focus for San José priorities includes preservation of more than \$4 million in current franchise revenues, local right-of-way controls over public facilities, and build-out requirements

### Homeland Security

As the City engaged in preparing the new regional Urban Area Security Initiative application for FY2006, we consulted with the Department of Homeland Security and replied to questions regarding local governance concerns. We also kept the Congressional delegation and Homeland Security Committee interests apprised of issues related to the new application construct.

With regard to broader homeland security funding and policy concerns, we continued coordination with the High-Risk Urban Area Coalition cities and the California Governor's Office to advocate in Congress and the Administration for maximum funding and programmatic flexibility in FY2007 appropriations. The President's Budget proposal generally is favorable for core funding programs that benefit San José, but a concern in justifying additional resources remains the overall rate of Federal funding draws from the Treasury, often inappropriately viewed as a proxy for "spending" the grant dollars.

Because the risk-based formula changes remains at a stalemate between House and Senate, most legislative activity has focused on interoperable communications systems, port security, evacuation

planning, and pandemic response. We are monitoring the various issues for those with direct relevance to San José, including opportunities to submit testimony.

**Other Federal Legislative and Funding Activities**

Upon release of the President's FY2007 Budget Proposal, we undertook a comprehensive analysis of funding and policy proposals of likely interest to the City, producing a memorandum and associated program tracking chart in under 24 hours.

We reviewed and commented to staff on a variety of reports to Council such as housing, community development, and other policy matters. We also continued to answer specific inquiries regarding the status of pending regulations, legislation, or funding.

We initiated work with the San José International Airport in their long-term funding and expansion plan, starting with pursuit of immediate FY2007 appropriations priorities and now continuing with approaches to secure resources for installation of in-line explosive detection systems.

We continued to provide regular telephone briefings to the Intergovernmental Relations Policy Cabinet on the status of federal issues, as well as separate monthly updates with the Housing Department.

Finally, we continued to identify and circulate notices of federal and other funding opportunities for a variety of programs for which the City might be eligible, highlighting particularly relevant notices.