



RULES COMTE: 12-12-07
ITEM: *C2A*

Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE **FROM:** Betsy Shotwell

SUBJECT: SEE BELOW

DATE: December 7, 2007

Approved

Diana Fisher

Date

12/10/07

SUBJECT: SUMMARY OF FEDERAL RELATIONS ACTIVITIES – YEAR-END 2007

RECOMMENDATION

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

OUTCOME

Presentation and review of the City's federal activities in Washington, D.C. in 2007 with an overview of the second year of the 110th Congress in 2008.

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 2008 federal budget and appropriations process; funding for the Airport; housing and community development; environmental and energy issues; homeland security and public safety; and advocacy efforts with federal agencies and other governmental bodies. Final outcome of the Federal 2007 Legislative Priorities, including pending City sponsored appropriations will be brought back to the Rules and Open Government Committee in January.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

By providing this document to the Rules and Open Government Committee in December, this document will be posted on the City's website with the December 12 meeting agenda and interested public will have the opportunity to review the document prior to the full Council acceptance.

COORDINATION

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

POLICY ALIGNMENT

The 2007 Federal legislative summary reflects the City's 2007 legislative policy goals and priorities and the City's efforts to work with our federal partners to advocate on issues of concern and interest to the City.

BUDGET REFERENCE

Not applicable.


BETSY SHOTWELL
Director, Intergovernmental Relations

Attachment: Patton Boggs, LLP Summary of Federal Relations Activities – Year-End 2007

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MEMORANDUM

To: City of San Jose
From: Patton Boggs LLP
Date: December 5, 2007
Subject: Federal Relations Update – Year-End 2007

This memorandum reviews Patton Boggs federal relations work on behalf of the San Jose through calendar year 2007, emphasizing activities since those reported as of the Congressional recess in August. Specifically, the report highlights efforts related to –

- Mayor Federal Advocacy Transition and D.C. Visits
- FY2008 Appropriations
- San Jose International Airport
- Federal Courthouse Construction
- Homeland Security and Public Safety
- Housing and Community Development
- Environmental and Energy Issues
- Internet Tax Moratorium
- Eminent Domain
- Federal Tax Withholding
- National Association Coordination and Support
- Federal Grant Opportunity Tracking

Mayor Federal Advocacy Transition and D.C. Visits

As previously reported, with the initiation of the new City administration, we provided transitional assistance and feedback to the Mayor's senior staff in developing and advancing a federal advocacy

approach that reflects both ongoing and new priorities. Topics included funding appropriations, pending legislation of interest to the City, identification of additional legislative opportunities, federal agency partnerships, and participation in associations and ad hoc coalitions.

In February and June, we assisted in identifying and organizing DC meetings for the Mayor, trying to quickly establish a presence and working relationships for the Mayor with the congressional delegation, congressional leadership, and relevant federal agencies. We developed agendas, preparing background materials, briefed staff, and engaged in discussions and follow-up. Topics covered appropriations, transportation, affordable housing programs, energy and environmental sustainability, economic development, airport security financing, and federal facilities.

In addition to the San Jose delegation in both House and Senate, meetings included –

- Office of the Speaker of the House (Senior Policy Advisor)
- Transportation Security Administration (Assistant Secretary, and senior staff)
- Economic Development Administration (Deputy Assistant Secretary)
- Department of Housing and Urban Development (Assistant Secretary for Policy Development and Research, and senior staff)
- Federal Transit Administration (Chief of Planning and Environment, Chief Counsel, and senior staff)
- General Services Administration (Deputy Commissioner, and senior staff)
- Department of Energy (Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, and senior staff)
- Environmental Protection Agency senior staff for Climate Protection Partnerships, Green Building Workgroup, Energy Supply and Industry, Green Power Partnership, Energy Star, Water and Wastewater Management

FY2008 Appropriations Projects

The budget process remains unsettled, uncertain, and acrimonious, with Congressional Democratic leadership at a stalemate with the President with regard to the overall discretionary funding level of the appropriations bills. While discussions continue, the government is operating under a Continuing Resolution (CR) at FY2007 levels, set to expire on December 14.

Through continued advocacy during conference negotiations, pending funds for City-led project requests actually increased to nearly \$3.6 million, up an additional \$400,000 (and compared to \$1.945 million at the same point in the FY2007 cycle). These results are from a year-long process that involves the City Manager's Office, department leads, and the Mayor's Office in developing requests, preparing detailed justification materials, and work with congressional delegation and appropriations committee staff --

- | | |
|---|-----------|
| ▪ Blossom Hill / Monterey Highway Pedestrian Overcrossing | \$500,000 |
| ▪ Homeless Job Training Program | \$330,000 |

- Gang Intervention service expansion \$375,000
- Services to New Americans immigrant life skills program \$200,000
- Early Start, Great Start early childhood education for school readiness \$200,000
- EHC Sobrato House facility replacement \$200,000
- San Jose Smart Start Program training partnership with National Hispanic University \$290,000
- San Jose Area Water Reclamation and Reuse Project \$1,500,000
(increase by \$1.3 million over President's Budget request)

Additionally, up to \$32,000,000 is pending in the Senate bill for the General Services Administration to acquire a downtown site for the new federal courthouse, although retaining those funds is exceedingly difficult under the appropriations scenarios being contemplated.

Finally, the City supported Santa Clara Valley Water District leadership on various projects with local impact but for which the District is the primary sponsor, including: Coyote / Berryessa Creeks Protection for \$1,500,000 (versus \$950,000 in President's Budget); Upper Penitencia Creek for \$300,000 (versus \$191,000 in Budget); and Guadalupe River Flood Control for \$1,000,000 (versus \$0 in Budget).

That City project priorities received measurably greater returns in the pending appropriations is exceptional because, as previously reported, most of the appropriations bills dramatically reduced the number and amounts of project earmarks, increasing the competitiveness of the process and reducing potential returns. For context, the number of earmarks in the Labor-HHS-Education, Transportation-HUD, and Interior & Environment bills was reduced by between 50% and 70%, and the total funding level for earmarks in those bills cut by between 50% and 80%.

In addition, the City advocated in tandem other local governments on funding levels for broader programs of interest, including the Community Development Block Grant, Section 8 Vouchers, Urban Area Security Initiative, Emergency Management Preparedness Grants, and Justice Assistance Grants.

However, the final prospects for these programs and individual projects is unclear. From the time Congress began consideration of the appropriations bills in May, the President threatened to veto all of the domestic spending bills because they exceed his budget request. Overall, Congress is seeking approximately \$21 billion over the President's total of \$933 billion, plus approximately \$2 billion in "emergency" spending. At \$9.8 billion over the President's budget request, the Labor-HHS-Education (LHHS) bill represents the widest margin between the President and Congress in any of the appropriations bills. The Military Construction-Veterans Affairs (MilCon-VA) bill represents an additional \$4 billion difference, with the remainder spread across the other bills.

Congress has passed conference agreements only two of the twelve appropriations bills – Defense and Labor-HHS-Education. As expected, the President signed the Defense bill and vetoed the LHHS bill, objecting to its funding level, and the House subsequently fell two votes short of the

necessary two-thirds majority required to override the veto. Additionally, the Transportation-HUD (THUD) conference agreement was approved by the House but was held back from Senate action. The remaining bills have all been passed by the House, while five have not even been voted on by the Senate.

In an effort to break the stalemate, Democratic leadership has proposed to split the difference with the President by sending him an omnibus packing of the remaining 11 bills with a \$10.6 billion reduction from the spending levels approved by Congress. While this approach initially seemed to garner Congressional Republican support as a good faith effort, the President is remaining steadfast in his threat to veto spending bills that exceed his budget request, or any combination of bills such as an omnibus. With the President seemingly unwilling to compromise, Congressional Republicans are split on the Democratic strategy.

Appropriations leads negotiating the compromise also are considering other issues, primarily the provision of supplemental war funding, in appealing to the President. Democrats had attached withdrawal-related conditions to the four-month \$50 million supplement, however, they may compromise by focusing on Afghanistan operations, reducing the amount of war funding, and increasing domestic spending in exchange for backing off those demands. Other provisions that faced specific veto threats appear to be dropped, including the lifting of sanctions on Cuba and easing policy language regarding overseas abortions.

Therefore, we anticipate the House will move forward next week with an omnibus package of the remaining bills, at the reduced funding level. The cuts most likely will be made to those programs that saw an increase over FY2007, not those level-funded, and possibly notable reductions in earmark values. As part of that timeline, we also expect a further CR lasting until December 21, providing another week for final action.

However, because there is uncertainty as to whether there will be enough Republican votes to withstand the expected veto, Democrats also are preparing a fallback omnibus that complies with the President's budget total. This certainly would include lower overall domestic program levels and probably elimination of project earmarks.

San Jose International Airport

Efforts on behalf of the Airport included supporting action on funding for in-line Explosive Detection System (EDS) construction, and advocacy on relevant provisions in Federal Aviation Administration reauthorization and the 9/11 Commission Homeland Security bill.

With regard to the EDS system installation, the primary focus is on securing the maximum potential funding contribution from the Transportation Security Administration (TSA). Although the Airport has a compelling argument that new terminal construction is underway and funding is needed now, it does not rank near the top based on risk criteria, which Congress directs TSA to consider in distributing limited funds, and larger and higher-threat airports are prioritized.

Therefore, we assisted the Airport and Mayor's Office in developing, advancing, and negotiating a novel "service agreement" proposal that would maximize funding return through a long-term contract with the potential to yield up to four times the most likely grant amount, which is limited by eligible costs, appropriations, and other factors. TSA enthusiastically endorsed the concept and advanced it to the Office of Management and Budget (OMB) for approval, and for the first time OMB agreed in principle to such a proposal pending resolution of certain legal questions. A final determination is anticipated in December, to be followed by contract negotiations if approved.

Reauthorization of federal aviation programs remains stalled after passage by the full House and the Senate Committees, primarily due to disagreements in the Senate over changing fee structures for general aviation. The House bill includes the primary policy measures that the Airport supports, while the Senate bill does not, and we are dealing with the delegation, particularly Sen. Boxer on the committee of jurisdiction, about addressing outstanding concerns. We have assisted airport officials in assessing policy and local priorities for various funding and administrative changes. We provided analysis on Administration and Congressional proposals related to enhancements to the Passenger Facilities Charge, increases to the Airport Improvement Program, and tax treatment of airport bonds. We also coordinated activity with other airports on positions of mutual benefit and helped respond to congressional delegation staff questions about local impacts of various policy options.

Specific to the 9/11 Commission Homeland Security authorization bill, the City sought expansion of and direction on TSA funding authority for in-line EDS that potentially could advantage San Jose. During conference discussions, we followed up on initial meetings facilitated with Airport officials regarding how to address these issues. The final 9/11 bill included Letter of Intent language that renews the authority for TSA to execute new LOIs, although OMB action has thwarted efforts to pursue that approach. It also provides added future funding and shifts allocations more to larger airports through the Aviation Capital Security Fund extension, collecting at least \$250 million annually and allocating at least \$200 million to large and medium airports and \$50 million discretionary grants to smaller airports, shifting the; and supplemental discretionary EDS grant funding authorization of \$450 million per year through FY2011, dependent on annual appropriations. However, the bill also includes a provision allowing reimbursements to airports that previously incurred eligible costs, which actually expands the scope of possible competition for these funds in the near term.

Federal Courthouse Construction

Upon prioritization by the City and interaction with potential sites for future BART development, we became more deeply engaged in helping to address issues related to construction of the new federal courthouse in downtown San Jose, including near-term funding for site acquisition. We supported congressional delegation efforts and linked the Mayor directly with General Services Administration (GSA) leadership to lay out a clear set of action steps for the City. In addition to ongoing local Redevelopment Authority efforts, those activities helped to secure some specific commitments by GSA senior officials to help avoid any agency impediments that might delay moving forward.

Currently, the Senate FY2008 appropriations bill includes \$32 million for courthouse, but the House bill includes nothing. To help preserve funds, we worked with the delegation to provide a rationale that the money be included this fiscal year despite the lack of a finished feasibility study and long-term nature of the project, as well as competition in California with funding courthouses already under construction. This process included dealings with GSA on process and timelines, and coordinating among Senate and House supporters on justifications to appropriations staff. Nevertheless, given the overall budget pressures, the pending amount is seriously threatened.

Homeland Security and Public Safety

As previously reported, most homeland security work focused on final conference negotiations on the 9/11 authorization bill involving reforms to grant programs, and advocacy on funding prioritization in implementation of the Public Safety Interoperable Communications Grant program that guaranteed \$14.5 million to the Bay Area initiative in which San Jose participates.

Working in a lead role on behalf of the High-Risk Urban Area Coalition, advocacy efforts on the 9/11 bill helped to secure a favorable outcome on the priority local government issues related to the Urban Area Security Initiative (UASI) program that delivers the most funding to the City, such as –

- Excluding UASI funds from being tapped to provide a minimum guaranteed allocation States, thereby preserving the full UASI appropriations for UASI designees.
- Codifying utilization of the key risk assessment criteria that have supported significant funding allocations to San Jose and the Bay Area.
- Preventing expansion of automatic program eligibility for the 100 largest Metropolitan Statistical Areas, thereby greatly diluting funds, by instead formalizing current policy of the Department of Homeland Security (DHS) to assess the 100 largest areas for potential invitation to apply.
- Averting a shift to Metropolitan Statistical Areas as the required geography for UASI designations, maintaining current DHS discretion to center on subareas that make operational sense.
- Eliminating proposed hard limits on the proportional allocation of UASI versus State grant appropriations, which would have limited the amount of UASI funding available.
- Increasing the UASI funding authorization level from \$850 million to \$1.3 billion over five years, contrasted with flat funding for State grants.
- Expanding eligible use of funding for personnel costs to allow use for straight-time as well as overtime, and increased permissibility to 50% of the total grant.
- Clarifying the definition of “supplantation” to assure that localities do not need to maintain the same level of prior-year local funding for specific activities in order to utilize future UASI funds for those same activities.

In addition, negotiations for expansion of UASI fund eligible uses and protection against being siphoned off for minimum state allocations contributed to inclusion of bill provisions on Emergency Management Performance Grants that (i) increase authorization levels to \$950 million over the next five years, of which California receives 8%, up from \$200 million in FY2007

appropriations, and (ii) allow use for construction of Emergency Operations Centers with a lower nonfederal match rate of 25% (versus the standard EMPG match of 50%).

Finally, efforts with some other Tier 1 UASI designees on the allocation decisions for \$1 billion in new Public Safety Interoperable Communications yielded a set-aside minimum guarantee worth \$14.5 million to the Bay Area UASI. We worked with the National Telecommunications and Information Administration, Department of Homeland Security, and White House Homeland Security Council, and congressional interests to advocate criteria for implementation that maximize impact by focusing funds on designated high-risk areas, for which the City would be competitively positioned.

In addition, as Congress used the immigration bill debate to again consider imposing financial penalties on localities with various “sanctuary city” policies, we assisted in analyzing applicability to San Jose, clarifying misperceptions about the local policy on cooperation with federal agencies around law enforcement and illegal immigrant status, and successfully opposing adoption of harmful amendments.

Finally, we assisted the Mayor’s Office in assessing and supporting Senator Feinstein’s efforts to secure passage of her anti-gang bill, which provides for increased federal resources to prevention, intervention, and enforcement activities. The bill passed the Senate, but prospects in the House are uncertain because of opposition to some enforcement penalties.

Housing and Community Development

The City participated in successful efforts led by the Santa Clara County Housing Authority to secure a statutory mandate that San Jose and Santa Clara be designated a Moving-to-Work program. That provision goes beyond the original attempt to simply clarify the authority and “preference” for the designation. Because the provision is part of the pending Transportation-HUD appropriations bill, final passage remains uncertain and subject to inclusion in an omnibus measure.

With regard to restoration of the San Jose “Difficult Development Area” (DDA) program designation for affordable housing, we continued to work with the authorizing committee staff on crafting a fix and including it in Low Income Housing Tax Credit legislation that may be drafted early next year. As previously reported, efforts stalled on advancing language as part of the THUD appropriations bill due to authorizer concerns raised about the potential for unintended broad national impacts and cost issues by the Congressional Budget Office. However, we did identify some new approaches to resolve the problem by directing HUD to define allowable rents for previously developed affordable housing units at a different level from those used in a new DDA calculation, and we drafted new legislative and report language, which is serving as the basis for negotiations.

With regard to general legislative priorities with notable impact to San Jose, we worked with a small group of major municipalities to advocate directly on key provisions of bills creating a National

Housing Trust Fund (NHTF) and reforming the Section 8 program. For the NHTF bill that passed the House, the group efforts helped to ensure (1) direct funding to localities for 60% of the funding, rather than States seeking to receive and control suballocation of the full amount; (2) allocation of funds based on population, housing development costs, and other factors advantageous to very large, expensive areas like San Jose; and (3) allowing local governments to provide grants to themselves rather than distribute all amounts externally. On Section 8 reforms, we helped to promote protections in the funding formula, allowance of greater reserves, and modifications to the Moving-to-Work Program, including removal of time limits and more flexible eligibility criteria that would benefit San Jose once designated.

We also provided feedback and analysis on a range of other bills related to foreclosure response / mortgage reform, predatory lending, and other topics.

Environmental and Energy Issues

In support of the new Green Vision initiative, we continued to assist in delegation and federal agency outreach, and providing information about relevant activities by other localities. For example, we organized several discussions with relevant Environmental Protection Agency and Department of Energy offices, helped to identify relevant programs for City participation, and engaged with agency staff on options for technical assistance resources leading to offers of assistance.

Additionally, we facilitated meetings for Environmental Services Department with delegation staff regarding wastewater plant infrastructure, watershed protection, water supply, and pending Army Corps study authorization. We also monitored and promoted inclusion of relevant project authorizations in the recently-passed Water Resources Development Act.

Per the City's support of the local government energy efficiency and conservation block grant concept proposed by the U.S. Conference of Mayors, we joined in advocating successfully for inclusion of the program in the comprehensive Energy Bill agreement passed by the House and now under consideration in the Senate. The measure may direct up to \$4 million to San Jose, if fully funded (which is highly unlikely), and these funds could be used for a range of activities anticipated by the Green Vision plan.

Unfortunately, efforts with a subset of the largest cities were not successful in trying to ensure that is targeted to the largest jurisdictions. Lower Senate thresholds for direct eligibility were included in the pending agreement, which significantly expands the number of cities and counties to receive funding without increasing the total amount available, and thus dilutes the total funding that the City could expect to receive.

Finally, we advised on the status of and assisted in communicating support for extension of the solar tax credit as part of the Energy Bill, which was under threat for exclusion. The credit is included in

the bill agreement, but still may be subject to elimination before final passage because of Senate opposition to tax increases required to offset that expense.

Internet Tax Moratorium

With pending expiration of the moratorium on state and local government taxation of the Internet, we worked with other local governments to avert imposition of a permanent moratorium in favor of a short-term extension, and assure inclusion of previously negotiated protections reserving collection of Utility User Tax revenue for traditional telecommunications services bundled with Internet service that would otherwise not be subject to local taxation.

The final bill extended the moratorium by seven years. It also created a new exemption for taxes on email service, homepages, and instant messaging, when not bundled and incidental to the Internet access service. That provision is somewhat up to interpretation, and we are working to assure it is not applied unfavorably.

Economic Development

As previously reported, we facilitated introductory meetings for the Mayor with Economic Development Administration (EDA) headquarters leadership to further promote successful City staff efforts that had delivered notable funding support from the EDA regional office. Those discussions helped the Mayor to secure insight on agency priorities and receive feedback on specific project ideas now advancing to application stage. They also reinforced interest in the Assistant Secretary for Economic Development visiting San Jose, which happened in June.

In response to City and Redevelopment Authority interests in moving forward the Electronic Transportation Development Center energy-efficient vehicle prototype project, we researched pursued agency partnership and funding opportunities for the project. We organized direct meetings with the Mayor and senior staff from the Department of Energy's Office of Energy Efficiency and Renewable Energy. We also identified agency leads and secured reviews of possible federal support for various technologies under consideration. These efforts ultimately proved unsuccessful because of both limitations on funding program limitations and agency interests.

Federal Tax Withholding

At the request of the City, we took a lead role in organizing other large municipalities to support repeal of new legislation requiring municipal governments that expend more than \$100 million in outside contracts to withhold three percent from all payments for goods and services, imposing significant new administrative and potential contract costs for the City.

We supported Mayor Reed as the lead sponsor on a U.S. Conference of Mayors resolution endorsing the repeal, helping to draft and advance the proposal. We secured the mayors of Oklahoma City (committee chair), Chicago, Miami, Portland, and Pasadena as original co-sponsors. The resolution passed and serves as proactive policy for advocacy by USCM.

In addition, we sought co-sponsorship by the area congressional delegation of pending repeal legislation, recently adding Rep. Eshoo to join Reps. Honda, Lofgren, and McNerney on the House bill. That bill now has 240 sponsors.

Eminent Domain

Legislation imposing national constraints on local use of eminent domain remains a possibility with the reintroduction of two bipartisan House bills and one Senate bill; a House bill was passed by the least controversial of five committees to which it was referred.

We continued to monitor the potential for serious action on the bill and prepare to oppose any restrictions current California standards for exercise of eminent domain or expand local government liability to compensate developers for zoning limitations or “regulatory takings.” We are coordinating with the group of large municipalities and environmental associations on the issue. We also briefed new delegation staff about the standards for and historical local use of eminent domain.

Reservist Pay Reviews

As previously reported, in response to a Council request, we helped to identify and work with the U.S. Department of Defense so that City staff could secure authority and create a system enabling expedited and accurate review of reservist pay information, to help the City determine supplemental wages.

Pipeline Right-of-Way Access Rates

In order to help set baselines for Department of Public Works negotiation on proposed access across City-owned property, we assisted in identifying federal land right-of-way schedules and criteria for energy pipelines access rates, involving research on administrative and statutory requirements and contacts with the Bureau of Land Management.

National Association and Intercity Support

On a continuing basis, we monitored and participated on behalf of the City in selected U.S. Conference of Mayors (USCM) and National League of Cities (NLC) policy activities of high priority to San Jose and with clear local impact.

We provided support to the Mayor and senior staff for association involvement, including assistance in relevant committee activities. For example, we drafted a USCM policy resolution for the Mayor’s sponsorship, and helped to secure and assess other proposed resolutions for original co-sponsorship or potential concerns; the Mayor ultimately co-sponsored 18 resolutions.

We also helped connect City leads with other similarly situated localities for the purposes of sharing best practices, coordinating policy agendas, and raising the City profile, such as helping to arrange

one-one-one discussions with mayors from Denver, Seattle, and San Diego, and advising on involvement in national initiatives dealing with topics such as illegal guns and climate change.

Federal Grant Opportunity Tracking

On a daily basis we provide the City with notices of federal and other funding opportunities for a variety of programs for which it is eligible, highlighting particularly relevant notices. We also help to answer City questions regarding these grant program opportunities, and in some cases, we draft and secure congressional letters of support for submissions. We identified and circulated more than 150 potential competitive grant solicitations.

