



Memorandum

TO: RULES COMMITTEE

FROM: Betsy Shotwell

SUBJECT: SEE BELOW

DATE: December 5, 2006

Approved

Date

12/5/06

SUBJECT: SUMMARY OF FEDERAL RELATIONS ACTIVITIES – YEAR-END 2006

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 2006 with an overview of the incoming 110th Congress in 2007.

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 including those concerning: telecommunications; advocacy efforts for the preservation of the Community Development Block Grant program, homeland security and public safety

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

COORDINATION

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

POLICY ALIGNMENT

The 2006 Federal legislative summary reflects the City's 2006 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.

COST IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Not a project.



BETSY SHOTWELL
Director, Intergovernmental Relations

Attachment: Patton Boggs, LLP Summary of Federal Relations Activities – Year-End 2006

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MEMORANDUM

To: City of San Jose
From: Patton Boggs LLP
Date: December 1, 2006
Subject: Summary of Federal Relations Activities – Year-End 2006

This memorandum reviews Patton Boggs federal relations work on behalf of the San Jose through calendar year 2006. Specifically, the report highlights some activities related to –

- FY2007 appropriations and funding projects;
- San Jose International Airport;
- telecommunications reform;
- user utility tax / federal telephone excise tax
- Difficult to Develop Area Designation;
- eminent domain / regulatory takings;
- Community Development Block Grant funding and policy;
- homeland security and public safety
- Municipal Health Services Medicare waiver; and
- other federal legislative and grant opportunity assistance.

FY2007 Appropriations and Other Funded Projects

Unable to complete all but the Defense and the Homeland Security Appropriations bills and with a few conservative Republican Senators blocking further action on an omnibus bill, Congress returns to a one-week lame-duck session in December for the primary purpose of passing a Continuing Resolution funding the government until February 17, 2007.

The Democratic-controlled Congress will be responsible for determining how the outstanding FY2007 bills are handled, but they must operate within the spending caps previously established by the Republicans. Given the substantial differences in House and Senate approaches to the bills, as well as insufficient support for the austere spending limits, this process will be challenging. Democrats also will seek to apply new lobbying / earmarking disclosure rules and limitations, and may again reorganize the House Appropriations Subcommittees.

At this point, it is not possible to predict what will happen in the FY2007 appropriations process, or when it might be finished, but there is a risk that earmarked San Jose projects may not be funded, even those that currently are included in the various pending bills. One option is to complete the bills individually or in an omnibus package, in which case many of the earmarked projects identified in the bills passed likely would be included, perhaps at reduced amounts. Another option is to fund the rest of FY2007 under a Continuing Resolution, setting program levels at the same as last year or some combination of current House and Senate bills, and probably dropping pending earmarks.

Nevertheless, work with City staff and the congressional delegation to develop and justify San Jose projects throughout the year produced very favorable results in House and Senate bills. Although appropriations bills generally included fewer projects and lower funding levels, with earmarks reduced by up to 70%, efforts on City-led projects for San Jose yielded more than \$1.45 million in the pending bills (*plus \$2 million through identification and reprogramming of existing unspent federal funds*) –

- San Jose International Airport runway guardlights -- \$400,000
- Homeless Job Training Initiative -- \$300,000
- Blossom Hill / Monterey Pedestrian Overcrossing -- \$200,000 (supplemental to \$2 million through reprogrammed funding)
- Services for New Americans program, providing outreach and coordinated assistance to immigrant communities -- \$200,000
- “Smart Start” partnership with National Hispanic University for early childhood development training and certification programs -- \$350,000
- San Jose BEST At-Risk Youth Program – “soft earmark” (no specified funding level yet)

Furthermore, the City secured \$2 million for the Blossom Hill / Monterey Pedestrian Overcrossing project outside of the regular FY2007 appropriations through Congress reprogramming of funds previously appropriated to projects outside the San Jose area. This funding is guaranteed and not subject to any further Congressional action. A bureaucratic problem has delayed access to the funds, and we are working with the U.S. Department of Transportation and relevant congressional committee staff to secure their release.

San Jose International Airport

In addition to seeking appropriations for a specific runway safety improvement project, we began mid-year to work with airport staff on broader funding issues related to installation of in-line Explosive Detection Systems. Those activities involved research and contacts with the Transportation Security Administration, including:

- providing information about the funding process and options, and helping to craft an updated request and justification for EDS installation discretionary support;
- organizing advocacy meetings with the TSA Director, Assistant Director for Operational Process and Technology, and other senior staff;
- briefing and coordinating with delegation staff on the revised Master Plan and pursuing TSA funding priorities;
- preparing TSA congressional hearing questions and draft letters related to airport prioritization for EDS installation funding; and
- monitoring overall appropriations and policy issues impacting on potential EDS support.

The TSA decision timeline for making FY2007 discretionary funding allocations is uncertain, and potential changes in airport system designs and priorities may alter the level and justification for funding requested. The City should expect to continue this effort with TSA and through the congressional delegation over several funding cycles before it can be completely resolved.

Telecommunications Reform

As forecasted, efforts to reform the Telecommunications Act stalled after the full House and the Senate Commerce Committee passed differing versions in June, with deep divisions in scope and policy approaches; notably modified bills will be developed by the new majority in the next session. Throughout the process, we provided local impact information and proposal assessments to the delegation, including Representative Eshoo and Senator Boxer who sit on the committees with jurisdiction over telecommunications reforms. We also coordinated positions and advocacy with DC representatives of other large California cities, the League of California Cities, and California State Association of Counties.

San Jose interests conformed with the general municipal priorities of preserving current franchise revenue levels, maintaining local prerogatives in managing rights-of-way, and assuring adequate build-out of services in lower-income and geographically undesirable areas. The final House bill provisions protected revenues and the ability to set constraints on access to local rights-of-way, but despite bipartisan efforts toward floor amendments, which we helped to facilitate, it did not address concerns about right-of-way enforcement in local courts or minimum build-out coverage. The

Senate Committee bill addressed local rights-of-way enforcement, but created other concerns related to application of an accounting standard that could narrow the basis of total revenue on which franchise fees can be collected, as well as build-out standards.

Specific to San Jose, we worked to help the City retain its ability to require delivery of I-Net services as part of local service agreements. San Jose is almost unique in its current position vis a vis franchise negotiations. We developed a policy approach, drafted legislative language, and prepared justifications that led to Senator Boxer advancing the amendment during committee consideration. The amendment would provide a limited exception for new I-Net requirements in those areas where an administrative proceeding has commenced. Although not adopted in committee, we are well-positioned to renew efforts during the crafting of the new bills next year.

Local User Utility Tax and Federal Telephone Excise Tax

In May 2006, the U.S. Treasury Department announced that it would no longer impose the Federal Excise Tax (FET) on long distance and bundled telephone communication services, beginning in August 1, 2006. In addition, there is pending legislation in both the House and Senate that could eliminate the FET all together. We have been working with City Staff to determine the potential impact of the Treasury's Department's decision and pending legislation on the City's telephone tax.

In our ongoing efforts to preserve local revenue, we are coordinating with other California localities, and have raised this issue of unintended potential impacts with the lead House sponsor of the FET elimination bill, as well as relevant Senate offices.

Difficult to Develop Area Designation

Working with the Congressional delegation, we continued to pursue legislative and administrative options to restore the "Difficult Development Area" (DDA) metropolitan region designation for affordable housing by the U.S. Department of Housing and Urban Development (HUD). Efforts included analysis of formula issues and statutory / regulatory authorities to fix identified problems, facilitating City meetings with senior HUD officials, helping to prepare House and Senate delegation letters to HUD regarding flaws in the DDA methodology and alternatives to address those issues, and ongoing discussions with HUD staff.

In order to force the correction, we continue to seek a policy clarification insert to the HUD appropriations bill, in tandem with pressing for HUD administrative action. We drafted legislative and report language to resolve the problem, which served as the basis for negotiations with appropriations and authorizing committee staff. Because the appropriations process stalled and the proposal could not pass independently without being included in a broader germane bill, no legislative vehicle was available to advance the fix.

While we wait to revisit a statutory correction when the FY2007 appropriations process renews in January 2007, we also are pursuing administrative resolution by arguing existing HUD authority to

define allowable rents for previously developed affordable housing units at a different level from those used in a new DDA calculation. Such an adjustment would resolve the anomaly in the DDA designation, which relies on a ratio of regional Fair Market Rent to Very Low Income levels compared against other jurisdictions; HUD has maintained artificially inflated San Jose income levels in order to avoid problems with reducing current affordable housing rents. We are working with the delegation to prepare the legal arguments and written justifications for further negotiations with HUD.

Eminent Domain / Regulatory Takings

As Congress continued to consider possible national constraints on exercise of local land use authorities, we monitored and argued against enactment of federal legislation that would restrict current California standards for exercise of eminent domain or expand local government liability to compensate developers for zoning limitations or “regulatory takings.” We worked with a group of large municipalities concerned about implications for urban revitalization, as well as municipal and environmental associations, including those with a national profile or representatives on committees of jurisdiction.

As the eminent domain debate concentrated on Senate action, we participated in ongoing consultations with Senate Judiciary Committee staff on various drafts of an eminent domain bill, seeking to assure consistency with California standards, such as allowing “blight” to be addressed and precluding new direct access to federal courts for adjudication of local eminent domain conflicts. We provided background information on eminent domain utilization and analysis of legislative proposal impacts.

We also advocated the City’s position against a House bill effort to substantively expand the current standards of a regulatory taking, so that localities would be subject to greater liability for existing land use regulations that limit the use of property and arguably diminish its value. The bill would help developers claim compensation for common zoning decisions on matters like size of buildings, environmental impacts, or nonconforming uses. It also would allow developers / property owners to sue directly in federal court, rather than pursuing claims in State courts with experience in resolving technical local zoning and land-use regulation issues, potentially making it more difficult for localities to defend. We again provided information and analysis to both the City and the delegation, and after House passage, secured commitments from Senate supporters to prevent the bill from moving forward prior. Prospects for the bill to be reconsidered in a Democrat-controlled Congress are very low.

With regard to implementing the eminent domain provision in FY2006 appropriations that required federally-funded projects using eminent domain not “primarily” benefit private interests, we engaged with HUD staff to advise on establishing reasonable and flexible requirements for application to the Community Development Block Grant (CDBG). Thus far, that provision has not been shown to create undue impediments to redevelopment efforts. We also participated in successful efforts with

House and Senate Appropriations Committees to assure that the FY2007 appropriations bill did not include more restrictive language than in FY2006.

Finally, we provided input to the Government Accountability Office (GAO) for the design of its congressionally-mandated study on local use of eminent domain across the country, intended to better inform potential federal legislation on the subject. The study was issued in December 2006 and generally indicates that insufficient national data exists, costs and benefits vary dramatically, and many States already are undertaking efforts that may preclude the need for federal intervention.

Community Development Block Grant (CDBG) Funding and Policy

CDBG funding levels continued to be the focus of heavy lobbying by national associations, which we supported by restating City interest and information about local uses. As a result of the intense national efforts, CDBG appropriations levels likely will exceed FY2006. In addition, given their importance to San Jose redevelopment efforts in the past, we participated in a small group advocating against elimination of the HUD Section 108 Loan Guarantee Program and Brownfields Economic Development Initiative Program, and symbolic amounts of funding are anticipated, positioning to at least sustain those programs for consideration in a more favorable congressional environment.

With regard to HUD-proposed modifications to the CDBG funding allocation formula announced in 2006, we monitored the progress of House hearings and Administration efforts to advance the draft legislation. The proposal closely resembled "Alternative 4" in the HUD report, establishing a single formula with minimum grant thresholds to reduce the number of direct recipients by about 150 communities, and modifying "need-based" inputs and weights to reflect income variables, economic trends, substandard housing, and demographics measuring consumption of public services. Under the proposed changes, San Jose would lose only about 1% of current funding levels, but many surrounding communities would lose much more and place additional strains on the City; recognizing that the challenge, we began to assess positions of various interests and the best position for City response. However, given the change in control of Congress, CDBG formula reforms now are extremely unlikely to be given serious consideration.

Homeland Security and Public Safety

Action on homeland security issues related to funding in the FY2007 appropriations process, program administrative concerns, and potential impacts on grant programs due to proposed reforms of the Department of Homeland Security and the Federal Emergency Management Agency.

Throughout the appropriations cycle we continued a lead role in advocacy and High-Risk Urban Area Coalition efforts, focusing on continuation of Urban Area Security Initiative funds that represent the majority of funding to the City. Congress ultimately increased funding for the UASI program (while other grant sources were cut), preserved key administrative policy provisions, and

rejected proposed set-asides that may be inconsistent with regional strategic plans and needs assessments.

With regard to homeland program administration issues, we secured and circulated draft DHS guidelines and documents for review and comment, provided input to DHS senior staff on program development and implementation, and identified opportunities for the City to participate in DHS decision-influencing teams. In anticipation of the potential need for a UASI grant extension to accommodate contracting delays outside of City control, we also worked with DHS to affirm receptivity to an extension request.

In addition, we addressed issues related to legislation moving all homeland security grants to FEMA oversight, thereby separating out agency responsibilities for risk assessment and grants, and potentially shifting allocations based on risk of terrorism to a more universal all-hazards approach likely to dilute resources for the City. We helped to secure report language explicitly protecting the current distribution of terrorism-focused funding. We also helped to generate a statement by the House Homeland Security Committee Chairman that reinforces the position.

We also engaged on other pending public safety issues with direct relevance to San Jose, such as implementation of interoperable communications grant programs. Specifically, we continue to deal with the National Telecommunications and Information Administration as they develop criteria for nearly \$1 billion in new grant funding targeted to interoperable communications system needs, trying to assure that those factors reflect the local circumstances in San Jose.

In addition, as Congress considered imposing financial penalties on localities with “sanctuary city” policies, we assisted the City in analyzing applicability to San Jose and clarifying federal misperceptions about the local policy on cooperation with federal agencies around law enforcement and illegal immigrant status.

Municipal Health Services Medicare Waiver

With the upcoming expiration of the Municipal Health Services Medicare waiver extension secured in legislation nearly two years ago, we explored prospects for a further extension. After consulting with the relevant committees of jurisdiction and potential sponsors for legislation, and City staff feedback in dealing with the three other impacted localities, we determined that another extension is not realistic and recommended planning for an orderly transition.

Policy Review and Input / Other Activities

Patton Boggs staff also provided City staff with monitoring, advice, and/or advocacy on specific topical areas, such as:

- housing legislation and appropriations, including Section 8 Voucher Program formula reforms and expansion of the Moving-to-Work demonstration
- Federal Courthouse land acquisition and construction
- Guadalupe River Park transportation / bridge needs
- Workforce Investment Act reauthorization and funding
- federal taxation proposals with impacts on local revenues or administrative functions
- processing and release of previously appropriated project funds
- participation in U.S. Conference of Mayors activities, including task force input and resolution drafting / co-sponsorship
- identification of federal grant opportunities in priority areas for which the City or partner organizations might be eligible.