

COUNTY SUPERVISOR DISCRETIONARY FUNDS: MORE TRANSPARENCY NEEDED

INTRODUCTION

The San Diego County Board of Supervisors (Board) oversees an annual budget just shy of \$5 billion, larger than the budgets of more than 20 states. Accounting for less than one percent of the total budget, two discretionary programs consistently generate significant political fallout in the media. They are the Community Enhancement Program (CEP) and the Neighborhood Reinvestment Program (NRP). These programs are often viewed as contentious and occasionally characterized by the media as “Slush Funds” because the funds are spent at the pleasure of San Diego County’s five Supervisors.

Created by the Board in 1985, the CEP uses the Transit Occupancy Tax (TOT) as its funding source. Unlike other jurisdictions, the County program attempts to allocate annually 100% of the TOT to organizations that support:

- Cultural activities – museums, arts groups
- Tourism – convention and visitors’ bureaus
- Economic development – Chambers of Commerce

The Neighborhood Reinvestment Program (NRP), formerly called the Community Projects Fund, was suggested in 1998-99 by the then-County Chief Administrative Officer as a budgeting policy to satisfy each Supervisor’s need to fund projects in their district. By allowing each Supervisor to budget NRP independently, the Board reduced the complexity of the budgeting process. In 2009 the Board, with encouragement from the Grand Jury and a taxpayer’s association, codified the policy with some program changes and a new name.

Money for NRP comes from a fund balance from the previous year’s unrestricted budget and traditionally has been \$10 million overall. In budget year 2010-2011, that amount was lowered to \$5 million, leaving each supervisory district office with \$1 million. A fund balance occurs when budgeted items are not spent in the budget year. That accumulated unrestricted amount in the County’s General Fund was almost \$500 million at the end of Fiscal Year 2009/2010. Thus, if the County is under budget at the end of the fiscal year, the Supervisors will have money for next year’s NRP.

INVESTIGATION

The 2010/2011 San Diego County Grand Jury (Grand Jury) decided to investigate the NRP to determine if funding ‘charitable’ non-profit organizations was a legitimate function of county government. The investigation expanded when a story appeared in San Diego media telling of a NRP grant made to what was described as a religious organization.

This is the Grand Jury’s second look at NRP. The 2004/2005 Grand Jury recommended the Board:

- Document the Community Projects Fund (NRP) program.
- Publicize the availability of the funds to all organizations.

- Provide an annual listing of the recipients of the grants.

The Grand Jury's recommended changes were components of the 2009 codification adopted by the Board.

The current study of NRP quickly expanded to include the slightly less controversial CEP because of the similarities in how the program funds are granted. In both cases a grant is awarded for a project or to an organization that is often within the recommending Supervisor's district. The Grand Jury suspected there was potential for trading tax-funded grants for political support.

The 2010/2011 Grand Jury investigation of NRP and CEP encompassed:

- Evaluation of the perceptions of the NRP and whether organizations receiving funding do so with a quid pro quo¹ of political gain.
- Determining if the funds are administered with philanthropic best practices.
- Determining if the overhead costs of the programs are a substantial added expense for taxpayers.

The Grand Jury's investigation began by scanning items in periodicals, sifting through Board procedures, analyzing NRP applications, and gathering data on the confluence of political contributors and recipient organizations. Interviews were conducted with more than 25 individuals and included:

- Elected officials
- At least one representative from each of the five Supervisorial offices
- County employees with program knowledge
- NRP and CEP grant recipients
- Leaders in the nonprofit community

DISCUSSION

Few topics can be relied upon to generate such heated debate as the proper use of tax monies. There is no shortage of critics questioning the Board's awarding of NRP grants or, to a lesser degree, CEP grants. Regardless of opinions and perceptions, program funds are authorized pursuant to Government Code section 26227 which allows non-profit organizations, public agencies, and County departments to receive grants for projects that serve a public purpose.

Legality and good intentions notwithstanding, the negative perceptions associated with the programs needed to be addressed. Additionally, there are the issues of best practices as related to government funding charitable organizations, and the administrative overhead costs of the programs.

The investigation found trading grants for political support is not an issue. The Grand Jury did not find direct evidence of influence buying nor of any member of a Supervisor's office even suggesting a political favor in exchange for a grant. However, the Grand Jury found that over the years some organizations have offered opportunity for political grandstanding to the donating Supervisor and that these actions have cast a shadow over both programs.

¹ quid pro quo: something given or done in exchange for something else.

Even though all Supervisors' recommendations are docketed and subject to open session debate, there is no institutional memory of any citizen ever speaking against a NRP grant. Rarely have recommendations been questioned or dissenting votes cast on either program because Supervisors trust that other members of the Board have done their due diligence and understand constituent needs. This process, built on mutual trust and perceived Board complicity, gave political watchdogs plenty of ammunition.

The Grand Jury found numerous awards were given to Supervisors by recipients of both NRP and CEP funds. Supervisors are also frequently invited to speak to audiences made up of recipient groups. Countless recipient organizations' annual reports list the 'who's-who' of top donors that often include our Supervisors alongside the County's top philanthropists. The Grand Jury could not find records of any personal donations by the Supervisors to these organizations that would merit this level of recognition.

Certain nonprofit organizations, especially in the arts and culture community, wield strong political influence in San Diego County politics. Some Board offices make sure to allocate NRP funds with these institutions and align with their missions for political leverage. While it is legally correct, the Grand Jury feels it is not necessarily ethically correct. Even after the most recent revisions to the NRP program, this cause and effect will undoubtedly continue unless the grant process provides additional transparency.

In September, during the Grand Jury's investigation, the Board docketed and unanimously passed Board of Supervisors Policy B-072² which addressed many of the NRP issues the Grand Jury was contemplating. The Board acted to curb the more egregious aspects of the program, and to place additional procedures to rein in some of the program's more questionable grants.

The new policy specifies, "If an organization chooses to give written recognition, then the organization shall recognize the County of San Diego, not individual Supervisors." This significantly reduces the specter of influence buying as NRP-funded organizations can no longer trumpet the perceived largess of a lone Supervisor who is awarding taxpayer money.

Equally as important in Policy B-072 is the prohibition on underwriting fundraising activities. The possibility of trading donations, as in a fundraising quid pro quo with some of the region's influential nonprofit leaders, has been markedly reduced.

FACTS AND FINDINGS

Fact: The County has efficient processes and procedures to track grant applications and grants with 1.5 full-time people within the office of Financial Planning.

Fact: County Counsel provides oversight of the content of Board letters on recommendations of grants for NRP and CEP, but does not provide due diligence on the organizations receiving grants.

² County of San Diego, Board of Supervisors Policy B-072 Neighborhood Reinvestment
<http://www.co.san-diego.ca.us/cob/docs/policy/B-72.pdf>

Fact: Fund Balance is the amount of money left over each year in the budget from job vacancies, unspent budget items, etc. With a County budget in the billions, the NRP program is an insignificant portion of this account yet provides one of the most visible signs of County spending.

Fact: The NRP is a valuable tool for putting tax dollars to work where they are collected and needed.

Fact: To ensure NRP integrity and viability, the Board has recently created well reasoned guidelines.

Fact: Many significant projects, such as libraries, animal shelters and regional parks, had their origins in NRP grants.

Fact: Most Supervisors have used NRP to generate matching grants from other agencies and private sources. This leverage makes Supervisors more effective in office.

Fact: Three full-time-equivalent County employees are assigned to the programs. Each Board office dedicates an average of one-third of a staff member's time to the NRP and CEP. The other identifiable expense associated with NRP is the estimated unit cost of submitting an NRP Board Letter: \$230.

Fact: The Grand Jury found that the CEP is a long-standing County program, but found no evidence the program is effective. It is easy to see the 'brick-and-mortar' results of many NRP grants, but it is not known if the effort required to collect and distribute TOT produces the desired results.

Fact: In 2010, Supervisor Slater-Price was fined by the Fair Political Practices Commission for failing to report her receipt of tickets to the San Diego Opera and Old Globe Theater, both recipients of NRP funds.

Fact: In 2009, an officer of the Kearny Mesa Little League was convicted of stealing funds granted through the NRP program to build a snack bar.

Fact: Since 2006, NRP grant recipients have arranged and funded trips for two Supervisors.

Fact: A religious organization was denied funds in 2010 for potentially intermingling funds associated with pro-life school programs.

Fact: Each year, some grant recipients are late with or do not complete the paperwork justifying their grants to the office of Financial Planning.

Fact: There is no process in place to conduct background checks for CEP and NRP applicants. Each Board office applies a different set of criteria for sorting NRP and CEP applications.

Fact: A majority of TOT is collected in the unincorporated part of the County comprised of two districts, yet each Board office equally divides the money for the CEP program.

Finding 01: From the outside, the NRP and CEP programs are perceived by some as Supervisor ‘slush funds.’ However, the Grand Jury believes recent changes made to the programs should have a positive impact on these outside perceptions.

Finding 02: Policy B-072 is a significant balance for the negative perceptions of the NRP program, but supervisorial common sense, self-policing and careful vetting of grant applicants by Board staff are still needed as oversight of the NRP program.

Finding 03: While there is overhead associated with the programs, the administrative costs are reasonable.

RECOMMENDATIONS

The 2010/2011 San Diego County Grand Jury recommends that the San Diego County Board of Supervisors:

- 11-30: Amend the NRP and CEP application to include questions on donations made in the past year to Supervisor campaigns from officers and board members of the applicant organization. This transparency will allow members of the public to draw their own conclusions and help polish the image of these programs.**
- 11-31: Publish the Tax ID number of each organization which receives funding, improving transparency to watchdog groups, taxpayer advocates and the general public.**
- 11-32: Create an outcome measurement to apply to CEP that will modify the program if it is not efficacious. Require grant recipients to measure their progress toward the goals of the program to give the Board and citizens of the County quality case studies for TOT revenue.**
- 11-33: Create an audit trail for CEP and NRP so donations for tangible items can be physically verified.**
- 11-34: Create a self-certification process to ensure recipient organizations are in full compliance with IRS regulations, and that board members of recipient organizations are not felons.**
- 11-35: Follow Policy B-072 meticulously, and ensure all Board staff review it annually.**

COMMENDATIONS

The Grand Jury commends the San Diego County Board of Supervisors for using NRP grants when the grants:

- Augment the County’s core competencies such as libraries, regional parks, and recreational facilities.
- Are used as leverage to generate additional funding from other agencies and private sources.
- Help create lasting improvements to the quality of life for County residents.

Further, the Grand Jury commends the San Diego County Board of Supervisors for making grants in a transparent and open process.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall

address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
San Diego County Board of Supervisors	11-30 through 11-35	07/26/11