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Fire Safe Council of Nevada County
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The Honorable Judge Scott Thomsen
Presiding Judge of the Grand Jury
201 Church Street
Nevada City, CA 95959

RE: Fire Safe Council of Nevada County Responses to Grand Jury 2023-2024 Report entitled FOLLOW THE MONEY: Fire Safe Council's Accountability Problems from 2022 Continue....and Appear to Worsen

Honorable Judge Scott Thomsen,

Please find enclosed the Fire Safe Council of Nevada County's responses to the Grand Jury 2023-2024 Report entitled *FOLLOW THE MONEY: Fire Safe Council's Accountability Problems from 2022 Continue....and Appear to Worsen*, as approved by the Board of Directors. Also attached is a copy of the February 5th, 2024, legal memorandum provided to the Grand Jury and referenced in our response.

Sincerely,
A handwritten signature in blue ink, appearing to read "Pete Williams".

Pete Williams
Chair, Board of Directors

Encl.

FIRE SAFE COUNCIL REPONSES TO
2024 Nevada County Civil Grand Jury Report
Dated April 8, 2024

A. RESPONSES TO FINDINGS

Finding 1. FSC does not properly account for large amounts of county (and other governmental) funding. This makes it impossible to follow the money.

Disagree: FSCNC accounts for and tracks all incoming and outgoing funding, grant payments, project status, and contractual obligations individually per the originating source funding requirements and agreements. All funding is tracked at multiple levels by the Grantor, project partner/s (i.e. County), and FSCNC.

For example, the Grand Jury claim of "\$2,000,000. in missing funds" in the GJ report and multiple related public media stories *was identified immediately as an accounting error, explained and corrected.* It is unplausible if not impossible that \$2,000,000. in grant funding could "go missing" within the multiple layers of fiscal scrutiny.

Finding 2. FSC does not publish all and may not have conducted some annual financial audits. This makes it more difficult to follow the money.

Partially Disagree: FSC acknowledges being behind on internal audits attributed to past Finance Dept. staff performance limitations and has employed a new Director of Finance who is currently working with independent Auditors to bring all past and recent financial reporting current through FY-2023. Completion is expected by the end of July 2024.

All past and current legally appropriate financial documents have been and will continue to be published and accessible to our partners and the public. This has been a standard practice of FSCNC in the past and will continue.

Note: FSCNC previously cooperated with the County on multiple requested external, independent, and forensic audits which produced no significant negative findings within FSCNC fiscal practices. FSCNC welcomed Audit input on all possible improvements and the Board directed staff to consider implementing new best practices where appropriate. The staff time and related expenses dedicated to assisting the County and auditors with these multiple external audits made it difficult to undertake and complete FSCNC's own internal audits, which, as stated, are currently being updated.

Finding 3. FSC's Board of Directors has allowed other questionable financial practices, such as voting on large non-agenda purchases, voting on audit documents not before the Board, and having pre-signed checks.

Disagree. FSCNC is not currently subject to nor has ever been subject to the Brown Act. Nonetheless, our practice continues to adhere to the best practices of the Brown Act, including properly capturing, in our minutes, decisions, and action items. We acknowledge that the minutes may make it difficult at times to understand and decipher what was approved by the Board of Directors. Documents and presentations are provided at the meeting for consideration by the voting board of directors. These documents are not always found in the board packet but may be provided under separate cover. As an independent 501c3 non-profit organization, many

documents should not be shared publicly due to privacy concerns and potential for fraud. All documents are made available to the Board of Directors for review when requested outside of meetings.

Finding 4. FSC's day-to-day financial practices do not adequately protect against the risk of fraud.

Disagree: There have been no indications or evidence of any fraudulent activities of any type within FSCNC. No valid threats of fraud have been brought to the attention of management or the Board of Directors by any staff member/s of FSCNC, the public or any partnering agency at the Federal, State or County levels. No internal, external, independent and/or forensic audit has demonstrated any findings of fraud related to FSCNC fiscal operations, management practices, field operations or grant management.

FSCNC's recently appointed Board Treasurer is actively engaged in assisting and oversight of current internal Audits and reviewing past fiscal practices w/the newly hired Director of Finance, along with the recently hired Management Analyst. FSCNC instituted additional separation of duty mandates in 2021 to assure transparency and reduce the risk of any fraudulent activities. The Board of Directors, Executive Director and Finance Team regularly review and update these as new positions and are added.

An additional safety measure already in place is that all FSCNC Board members, Management and staff submit annual Fraudulent Activity Questionnaires which are collected, submitted and assessed by an external independent auditing firm. This allows every FSCNC employee at every level an opportunity to submit anonymous reports on agency activities without fear of retribution or job security.

Aside from this measure, all FSCNC staff have been offered open-door access to their immediate supervisor, middle management, upper management/ED and Board Chairman to discuss any concerns or give input on FSCNC policy, operational standards, and/or especially field safety procedures on all grant project work sites. FSCNC strives to make staff feel comfortable to give their input openly in a private and/or group setting.

Finding 5. FSC does not appear to have appropriate California contractor's licenses for the work that it performs.

Disagree: FSCNC, as with the majority of NPOs and public agencies (CAL FIRE etc.) is an authorized, exempt entity that does not require a contractor's license to operate. In the past the CSLB denied FSCNC a license due to FSCNC's organizational structure, which does not allow an NPO w/o "entity ownership" to qualify. FSCNC is currently listed as a qualified exempt entity with the Federal and State governments and has and will continue to complete legally qualified grant project work without a typical contractor's license, which is required mainly of privately owned entities. If/when FSCNC becomes aware of any required licensing that they are required to possess and legally allowed to apply for and receive, they will do so without hesitation.

There remains a lack of clarity on this issue. Recent extensive communications between FSCNC and both the CSLB licensing advisor and CSLB legal department requesting detailed confirmation regarding licensing requirements, have provided only generalized responses to our requests. Ultimately, the CSLB response was that fire prevention work performed in a Rural District or

County is exempt from the requirement of a CSLB issued contractor's license. Following is the text of a June 18th, 2024, CSLB correspondence with FSCNC Management Analyst Duane Strawser:

"Mr. Strawser,

Our CSLB legal counsel has informed me that the work performed by the Fire Safe Council of Nevada County meets the definition of a contractor, and a contractor's license is required, unless the work is performed in rural districts, then it may qualify as exempt under BPC-7049 (see below), pursuant to BPC 7059(b)." If a weed abatement/brush clearing project does not alter the grade of the land and/or no trees are trimmed/removed or stump grinding is done by the primary agency/Grantee, then a contractor's license is not required.

- Weed abatement done by mowing, masticating attachments, weed eaters and hand tools would not require a license.
- There is a license exemption for clearing of land for fire prevention purposes in rural districts.
- § 7049. Ditch work and agricultural or fire prevention work:
- This chapter does not apply to any clearing or other work upon the land in rural districts for fire prevention purposes.
- § 7059. (b) (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code). Added Stats 1939 ch 37 § 1. Amended Stats 1941 ch 971 § 9; Stats 1945 ch 1159 § 5; Stats 1957 ch 2084 § 21; Stats 1966 ch 4 § 1; Stats 1983 ch 891 § 5; Stats 1987 ch 485 § 1.
- If the cost of a weed abatement/brush clearing project is \$500 or more, including labor and materials, and you are trimming/removing trees or grinding/removing stumps the C61/D49-Tree Service or C49-Tree and Palm classification is required. The C27-Landscaping classification is also acceptable, unless performed in a rural district for fire prevention purposes rendering the work performed as exempt."

Finding 6. FSC has reduced transparency, making it difficult for the public and the county to monitor and verify the proper use of county funding.

Disagree: The FSCNC Board, Management, past Controller(s) and staff have been required to follow all Generally Accepted Accounting Principles (GAAP). Moving forward, the new Director of Finance is establishing a set of protocols for approval by the Board of Directors as required best practices. Moving forward, this will ensure continued accurate, thorough and transparent fiscal management, tracking and reporting.

All funding agencies require funding to be tracked independently in accordance with the source grant contractual obligations. This accounting detail and project tracking of funds are provided to the County through the mandated financial reporting. All such documents are available to the public.

Finding 7. From at least April 2019 through January 2022, FSC, knowing it was subject to the Brown Act, appears to have violated it numerous times.

Disagree: FSCNC is not currently subject to nor has ever been subject to the Brown Act. Nonetheless, our practice continues to adhere to the best practices of the Brown Act.

Finding 8. FSC has violated its own bylaws.

Disagree: FSCNC bylaws, standard for most non-profits and posted on our website, state, “Any Director may be removed, with or without cause, by a 75% majority consent of our Board at any time.” We legally removed a Director, for cause, 3 years ago in 2021. This is an internal, private HR matter as is standard practice for agencies and employers in California.

Finding 9. Fire Safe Council of Nevada County is not a responsible, accountable, or appropriate recipient for county (and other governmental) funding.

Disagree: This statement is an opinion, not a finding. There is absolutely no viable evidence presented by the Grand Jury to support anything within this statement. These unfounded accusations are outrageously inappropriate, inaccurate and unfounded, potentially containing libel, defamation, and slander.

Despite lack of authority by the Grand Jury over the FSCNC and other similar NPOs (please see attached legal communication dated February 5, 2024), FSCNC Board and/or Management staff have agreed to voluntarily appear before the Grand Jury for in-person interview/s to address the false statements leveled against them and provide accurate, detailed responses to the Grand Jury report contents.

Finding 12. FSC has had frequent, unexplained turnover of key financial personnel.

Disagree: Explaining the cause of termination is not prudent because potential claims that could be made by the separated employee. Separation of two key finance personnel in a three-year period, though regrettable, would not be an uncommon occurrence in similar agencies.

Past key financial personnel turnover is attributed to a lack of competent job performance of two past fiscal staff despite thorough resume/background checks being performed before hiring, which is standard in any agency’s hiring practices.

A new Director of Finance with a reputable track record and no past relationship with FSCNC was hired in April 2024 to assist in accelerating independent Audit completion and presenting the Board of Directors with a comprehensive report of past, current and future status of all fiscal operations. The recently hired Management Analyst searched for references from the County of Nevada, City of Grass Valley, and City of Nevada City, plus private sector inquiries to find qualified candidates with no previous FSCNC association to be considered for the open position.

B. RESPONSES TO RECOMMENDATIONS

Recommendation 1. FSC's Board of Directors needs to reform FSC's financial practices to ensure greater protection against fraud.

Response: *Implemented in 2021.* There have been no indications of any fraudulent activities within FSCNC. No valid threats of fraud have been brought to the attention of management or the Board of Directors by any staff member/s of FSCNC, the public or any partnering agency at the Federal, State or County levels. No internal, external, independent and/or forensic audit has demonstrated any findings of fraud related to FSCNC fiscal operations, management practices, or field operations.

Recommendation 2. FSC's Board of Directors needs to establish consistent accounting practices.

Response: *Previously implemented - Consistent accounting practices are already in place.* The Board of Directors implements any recommendations from the independent auditor. FSCNC provides detailed accounting documentation of all funds received from Grantors and partners as required and agreed upon contractually. FSCNC strives to follow fiscal and operational best practices, even when these efforts are beyond the scope of minimum contractual requirements and accepted accounting practices.

Recommendation 3. FSC's Board of Directors needs to adopt accounting practices that allow accurate tracking of county funding through expenditures.

Response: *Previously implemented - Consistent accounting practices are already in place.* FSCNC provides detailed accounting documentation of all funds received from and/or managed by the County of Nevada as contractually required. FSCNC tracks and allows full access to the County of Nevada on all applicable funding sources, expenditures, and post project accounting. FSCNC readily agreed to proactively adopt accounting/tracking practices as requested by former Nevada County Auditor-Controller, Marcia Salter following a partnership meeting in October 2021 to ensure both partner agencies moved forward with compatible fiscal operational procedures. FSCNC follows fiscal and operational best practices and regularly looks for opportunities to improve its operational models.

Recommendation 4. FSC's Board of Directors needs to ensure the retention of qualified financial staff.

Response: *Previously implemented.* No Board of Directors can ensure the retention of qualified staff within any agency or department. To "ensure retention" is an unrealistic statement and expectation for any agency. With that stated, the FSCNC Board and management has made every reasonable attempt to offer competitive salaries, medical and benefit packages and a professional, positive working environment to retain key staff members. We have been working to build an exceptionally qualified and supportive team to provide the best possible wildfire protection services to Nevada County residents.

The reality is that as a local NPO with a limited operational budget, the salary scale we can offer, while equal or slightly higher than similar agencies, cannot match that of municipal agencies such as the County of Nevada, City of Grass Valley or Nevada City, let alone the private sector. The elected County Auditor/Controller makes twice (2x) the salary of FSCNC's new Director of Finance, and the Assistant Auditor along with multiple Chief Fiscal/Administrative Officers appointed to County of Nevada staff each make significant higher salaries than the FSCNC Director of Finance. This fact makes it unrealistic for any small local NPO Board to "ensure" retention of key personnel when larger municipal and private sector agencies regularly offer more attractive salary and benefit packages to hire our employees away.

Recommendation 5. FSC's Board of Directors needs to ensure that qualified financial staff are allowed appropriately to monitor and enforce consistent, proper accounting practices.

Response: *Previously implemented.* The FSCNC Board of Directors currently implements this practice, requiring all fiscal staff to be allowed to complete their daily work responsibilities without interference from other departments or individuals at any level at the FSCNC. Financial staff are hired based on standard employment practices of vetting resume submissions based on

stated qualifications, contacting references, and completing background checks, as necessary. FSCNC Board members and/or Management complete all legally allowed due diligence to ensure prospective employees meet minimum qualifications required within that industry specialty.

The Board Treasurer regularly meets with the Director of Finance and Executive Director to ensure the organization's fiduciary responsibility and oversight. Staff from all departments, including Finance, have direct private and/or open access to their supervisor, the ED or Board Chairman.

Recommendation 6. "FSC's Board of Directors should hire an external consultant to determine the cause(s) of the frequent turnover of financial personnel and make recommendations."

Response: *Will not be implemented.* We believe hiring a consultant is unnecessary. FSCNC has hired and separated two key finance personnel in the past three years. This turnover, like for any agency, municipality, or employer, makes our current staff's jobs more challenging. Working with multiple vendors and their requirements is demanding work and it is a challenge to recruit high-quality candidates to fill critical positions.

Recommendation 7. "FSC's Board of Directors needs to establish clear policies governing financial management within the corporation."

Response: *Implemented in 2021.* There are currently detailed policies established at the Board, ED, and Management levels to ensure consistency and transparency in all fiscal matters. The newly hired Director of Finance has been given the ability to make recommendations on fiscal management best practices moving forward.

Recommendation 8. "FSC's Board of Directors needs to ensure that all board members receive training on their responsibilities, including overseeing proper financial practices and accountability, and timely receipt of all reports and budgets."

Response: *Previously implemented.* All Board members receive orientation training on the responsibilities expected while serving on the board, which includes fiduciary responsibilities. Further, Directors attend the Center for Non-Profit Leadership training classes, complete internal board of director trainings, workshops, and complete all required courses, e.g. Code of Conduct, Business Ethics, Sexual Harassment Prevention, and Diversity Equity and Inclusion. FSCNC annually reviews and updates the Board Directors Handbook, a living document, used by each Board member for long-term reference.

Recommendation 9. "FSC's Board of Directors needs to ensure greater transparency so that Nevada County and the public are able to confirm proper use of county funding."

Response: *Implemented.* All appropriate information, including financial, required to maintain our 501c3 non-profit status is considered public information and available on the FSCNC website (www.areyoufiresafe.com).

Recommendation 10. "FSCs needs to obtain appropriate contractor's licenses for the work it performs for the county."

Response: *This recommendation requires further analysis.* FSCNC is an exempt entity and to date has not been required to possess, nor eligible to apply for a specific CSLB license. FSCNC continues to complete their projects as an authorized entity with numerous partners at the Federal, State, County and regional levels. FSCNC and the County of Nevada have both been in regular contact with the CSLB to explore this issue. See response to Finding #5 for further information. Upon CSLB's final determination, FSC will comply with any licensing requirements.

Recommendation 11. "FSC's Board of Directors needs to ensure that FSC follows its own bylaws."

Response: FSCNC has and continues to diligently follow its established bylaws. Any suggestion that FSCNC has broken its bylaws in the past is based on misinformation. Specifically, FSCNC bylaws, standard for most non-profits and posted on our website, state, "Any Director may be removed, with or without cause, by a 75% majority consent of our Board at any time." We legally removed a Director, for cause, 3 years ago in 2021. This is an internal, private HR matter as is standard practice for agencies and employers in California.

Recommendation 15. FSC's Board of Directors needs to conduct a thorough investigation into the financial discrepancies this report identifies."

Response: *Implemented in 2021.* The FSCNC Board of Directors has and will continue to diligently pursue the facts in any questions or concerns about the agency's daily operations and is dedicated to providing transparency to its project partners and the public at all times.



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February 5, 2024

Nevada County Grand Jury
Eric Rood Administrative Center
950 Maidu Avenue
Nevada City, California 95959

RE: Letter Communication Hand Delivered 1/2/2024 – Deborah Heller, Foreperson

Dear Ms. Heller,

I am writing to you in response to your communication that was hand delivered to our office on January 2nd, 2024. We have been in discussions regarding this and other requests with our legal counsel, and believe that this request, as well as the previous ones received for documents and in-person appearances, are outside of the Grand Jury's legal authority to request. While we greatly appreciate our relationship with the County and have dutifully complied with previous requests of the Grand Jury, these burdensome requests have continued to be made, and so feel it necessary to explain the relationship between the Nevada County Grand Jury ("Grand Jury") and the Fire Safe Council of Nevada County ("Council").

By way of explanation from our legal counsel, grand juries in California are governed by state statute, which provides guidance on their operation and authority, and none of which authorizes the Grand Jury to subpoena records or persons of the Council. As established by state statute, a grand jury ". . . shall be charged and sworn to investigate or inquire into *county matters* of civil concern, such as the needs of the county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties of the agencies subject to investigation pursuant to Section 914.1." (Penal Code § 888; see also Penal Code § 914.1 [Grand Jury may investigate "county matters of civil concern."]) Further, as stated on the Grand Jury's public facing website, "[t]he Nevada County Grand Jury is an arm of the County Superior Court that investigates, and issues reports to improve *local government* efficiency and to provide accountability and transparency." (<https://www.nevada.courts.ca.gov/general-information/grand-jury>; italics added.)

Penal Code § 914.1, consistent with Penal Code § 888, states that the Grand Jury is to inquire into "county matters of civil concern," and cites various code provisions defining the powers and duties of the Grand Jury. That section of the code then goes on to cite Penal Code § 888, discussed above. It also cites Article 2, commencing with § 925, which provides that grand juries are sworn to investigate "*county*

matters of civil concern, such as the needs of the county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties of the agencies subject to investigation pursuant to Section 914.1.” The Council is not a County agency subject to investigation pursuant to this section. Also cited is Article 3, commencing with § 934, which provides that a grand jury may request the advice of the judge or district attorney; this provision, likewise, does not authorize the Grand Jury to examine the records of the Council.

Penal Code § 914.1 also cites § 3060 of Chapter 7 of Division 4 of Title 1 of the Government Code, which addresses accusations by a grand jury against “any officer of a district, county, or city, including any member of a governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office . . .” This section clearly does not apply to the Council as it is not an officer nor personnel of any such entity. Finally, Section 914.1 cites Section 17006 of the Welfare and Institutions Code as providing authority for a grand jury to investigate welfare applications. Again, this provision clearly does not apply to the Council.

Even more specific to nonprofits, Cal. Penal Code § 933.6 provides that, “[a] grand jury may at any time examine the books and records of any nonprofit corporation *established by or operated on behalf* of a public entity [. . .] and, in addition to any other investigatory powers granted may investigate and report upon the method or system of performing the duties of such nonprofit corporation.” The plain language of the statute clearly limits such investigatory power to nonprofits that were either established by, or which are operated on behalf of, a public entity. Because the Council is independent and was not established by, nor is it operated on behalf of, Nevada County, this section of the Penal Code clearly does not apply to it.

While caselaw interpreting Cal. Penal Code § 933.6 is limited, the California Attorney General explained in Opinion No. 02-808 that a county was authorized to contract with a nonprofit mutual benefit corporation to promote tourism within the county despite a superior court ruling finding that the county grand jury lacked statutory authority to examine the books and records of the corporation because it was not performing a function of the county, nor was it operated on behalf of the county, despite receiving the majority of its funding from the county and providing “some benefit” to the county. (Op. Atty. Gen. No. 02-808 (Feb. 20, 2003), 2003 WL 437443.) This AG opinion supports the position that the Council is not under the authority of the County, even if it receives funding from the County.

The Council’s Articles of Incorporation specifically provide that it is a nonprofit public benefit corporation; the articles do not mention Nevada County because it was not established by Nevada County. (Ex. A, Articles of Incorporation.) Rather, it is an independent 501(c)(3) nonprofit organization separate and distinct from Nevada County.

Further, the Council’s Bylaws provide a mission statement noting that the council is a “non-profit, local volunteer organization” consisting of members from “all elements of the community.” (Ex. B, Bylaws.) Section 2 of the Bylaws states that the Board shall strive to provide representation from stakeholder groups such as local fire agencies, state agencies, federal agencies, air and water management, private business sector, insurance interests, county agencies, city agencies, Truckee area representatives, homeowners associations, members at large, and Firewise communities. The Council’s website lists numerous additional community partners, including the fire departments of Grass Valley, Higgins, Nevada City, Nevada County, North San Juan, Ophir Hill, Peardale-Chicago Park, Penn Valley, Rough & Ready, Truckee, and Washington. The website also lists community partners such as the Bureau of Land Management, California Air Resources Board, CalFire, California Fire Alliance, and numerous other

local, state, and federal governmental agencies. (See www.areyoufiresafe.com/partners.) Clearly, the Fire Safe Council is not operated on behalf of Nevada County, and instead partners with numerous private partners and government partners at the local, state, and federal level. The Council is an independent nonprofit corporation with a plethora of community partners in both the private sector and government; it is not a county agency.

In summary, while the Council greatly appreciates its relationship with the County, because the Council is a nonprofit corporation, neither established by or on behalf of the County of Nevada, the Grand Jury does not have the legal authority to subpoena records or in-person appearances of Council members or staff as a matter of course, or without further justification.

Notwithstanding, and as a courtesy reminder, any legally required nonprofit transparency documentation can be found on our website under "Non-Profit Transparency Documentation" at www.areyoufiresafe.com/non-profit-transparency-documentation.

Regards,

Jamie Jones
Executive Director, CEO

cc: Sean Cameron, Legal Counsel