

**Fire Safe Council of Nevada County
Growing Pains and Best Practices**

2021 - 2022 Nevada County Grand Jury

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Fire Safe Council of Nevada County Growing Pains and Best Practices

Summary

Nevada County selected the Fire Safe Council of Nevada County as one of the agencies to provide critical wildfire mitigation support. The County and citizen concerns about alleged financial issues and mismanagement by the Fire Safe Council were made public in The Grass Valley Union in 2021. Due to the critical support the Fire Safe Council provides to the County's wildfire programs the 2021-2022 Nevada County Grand Jury launched an investigation into the allegations.

The non-profit Fire Safe Council of Nevada County provides critical wildfire mitigation support to Nevada County and provides wildfire hardening services. In recent years fire danger in the community has exploded, and so has the need for organizations such as the Fire Safe Council of Nevada County. As a result, there has been an influx of tax dollars to fund fire protection programs. The non-profit has expanded rapidly, requiring additional staff to implement and complete expanding programs, and has experienced significant organizational growing pains.

Nevada County was made aware of issues with the Fire Safe Council of Nevada County through a letter from an attorney representing a former contract employee. The Fire Safe Council of Nevada County Board of Directors ordered an internal control report from a third-party accounting firm for Fiscal Years 2019 - 2021 which identified material weaknesses and significant deficiencies in internal controls. Nevada County followed up with two letters to the Fire Safe Council of Nevada County expressing concern with the organization's operations.

Concerns raised include insufficient internal controls, material weaknesses, and other deficiencies. The Fire Safe Council of Nevada County lacks the segregation of duties which would provide required checks and balances of financial processes, as well as protect the organization and its employees. Segregation of duties is an important set of controls that ensures no one individual is responsible for writing and signing bank checks, payroll, invoices, purchasing, and financial reporting.

The Fire Safe Council of Nevada County responded that many of the allegations were inaccurate and based on incomplete information—nonetheless the nonprofit had initiated the first steps of a planned improvement program.

The Nevada County Grand Jury found that issues identified by Nevada County, auditors, and the public are far from resolved, and the continued turnover of financial employees may put the organization at serious financial risk.

The Fire Safe Council of Nevada County is a significant part of Nevada County's safety net. The Nevada County Grand Jury recommends that continued and sustained development as

outlined by Nevada County will allow the Fire Safe Council of Nevada County to achieve their stated mission: “To make Nevada County safer from destructive wildfire”

Glossary

501(c)(3)	Nonprofit organization as defined by the IRS
Board	Fire Safe Council Board of Directors
County	Nevada County
ED	Executive Director
FSC	Fire Safe Council of Nevada County
Jury	2021-2022 Nevada County Grand Jury
OES	Office of Emergency Services
P.C.	Penal Code

Background

Nevada County’s Office of Emergency Services (OES) is responsible for:

...coordinating with County departments, local cities, and special districts to mitigate against, prepare for, respond to, and recover from disasters.

OES is responsible for designing and conducting simulated disaster preparedness and response exercises, and evaluating emergency staff training. OES is also responsible for maintaining the County Emergency Operations Center (EOC) in a state of readiness.¹

Nevada County (County) selected the Fire Safe Council of Nevada County (FSC) as one of the agencies to provide critical wildfire mitigation support. The County and citizen concerns about alleged financial problems and mismanagement by FSC were made public in the Grass Valley Union on August 26, 2021. Due to the critical support FSC provides to the County’s wildfire programs, the 2021-2022 Nevada County Grand Jury (Jury) launched an investigation into the allegations.

¹ <https://www.nevadacountyca.gov/1241/About>

Approach

The Jury's investigative process included interviews with County, FSC staff and the FSC Board of Directors (Board), and members of the public. It also reviewed County documents, FSC Board agendas, minutes, packets, and the following resources:

- available FSC policies, procedures, and audits
- prior Grand Jury reports
- correspondence and documents from multiple sources
- publicly disseminated letters and media articles

*Best practices for 501(c)(3) (NonProfit Organizations)*² was used to develop findings and recommendations.

Discussion

In California, each of the 58 counties empanels a Civil Grand Jury, whose function is to investigate the operations of the various officers, departments, and agencies of local government. A Jury may examine all aspects of county or city government, special districts, non-profits, and other tax-supported organizations to ensure that the best interests of the citizens of a county are being served (P.C. 933.6). The Jury reviews and evaluates policies, procedures, operations, and systems utilized by local agencies to determine whether more effective methods may be employed.

The County receives and distributes federal, state, and local funds, as well as grants, to agencies such as FSC.

The FSC provides critical wildfire mitigation support to the County through many services, i.e., Chipping Program, Firewise USA®, Green Waste, Defensible Space Advisory Visit (DSAV), Address Signs, Scotch Broom Challenge, and Low-Cost Defensible Space Clearing Services.

² https://www.councilofnonprofits.org/?gclid=CjwKCAjw-8qVBhANEiwAfjXLrm2dvfp3XQXtb14MS2bHfZr6einDodon-Off_bdwwMIX7EmEj56XwWBoCiwQQA_vD_BwE

In recent years fire danger in our community has exploded, and so has the need for organizations such as FSC. As a result, there has been an influx of tax dollars funding fire protection programs. The chart below represents FSC’s *Statements of Activities Reports* posted on their website listing growth in revenues from public funds such as grants, donations, and other support during recent years:

FSC Total Revenue and Other Support	
June 30, 2018	\$399,595*
June 30, 2019	\$718,943*
June 30, 2020	\$2,340,117
June 30, 2021	\$1,909,667
January 31, 2022	\$1,685,537

*According to FSC’s IRS 990 filing for 2018 and 2019, total revenues were \$665,071 and \$3,376,215, respectively.

The January 2022 Executive Director’s report listed multiple grant applications in process:

CAL FIRE CCI Grants	
Chipping/Green Waste	\$3.5M
South Yuba Rim Fuel Break	\$2M
FOREST HEALTH	\$5M
SIERRA NEVADA CONSERVANCY	\$250K
HMGP – CAL OES/FEMA	
Deer Creek Shaded Fuel Break	\$7M
Lake Wildwood	\$1M
Home Hardening	\$5M
TOTAL	\$23.75M

*M = million

The non-profit has expanded rapidly, requiring additional staff to implement and complete programs, and has experienced significant organizational growing pains. An audit issued for FY 2018 - 2019 identified deficiencies in FSC’s operational, and financial internal controls.³

The County and the FSC Board of Directors received a letter from Susan K. McGuire, attorney⁴, dated June 14, 2021, written on behalf of a former FSC financial contract employee. The letter raised issues of mismanagement concerning bookkeeping and payroll practices, a retirement plan, and personal use of company funds. To clarify issues, the FSC Board ordered an internal control report from a third-party accounting firm⁵ for the Fiscal Years (FYs) 2019 through 2021. The audit report dated July 8, 2021, identified significant deficiencies in internal controls.

³ <https://sci-prod-public-pdfs.s3-us-west-2.amazonaws.com/RndwuVOfoSK-6S5z70leuZkH2w.pdf>

⁴ <https://sci-prod-public-pdfs.s3-us-west-2.amazonaws.com/50xdm7yoml260OAOonpbyviMGSAU.pdf>

⁵ <https://sci-prod-public-pdfs.s3-us-west-2.amazonaws.com/rHzu-ou3CEStlrxVpgXzxSwxnU.pdf>

The letter and audit report resulted in the County issuing two (2) letters to FSC: The first letter⁶, dated June 23, 2021, stated “The County does not have any concerns of the Fire Safe Council meeting grant deliverables. The County views the Fire Safe Council as a critical and valued partner in preparing our community for wildfire.” The County also requested documents and financial information relating to both fiscal and operational concerns.

In the second letter⁷, dated August 23, 2021, the County reiterated the steps needed to continue a mutually satisfactory partnership as stated below:

County nonprofit partners we work with are expected to follow all nonprofit legal requirements and industry best practices, implementing policies that address key areas that include:

- Governance
- Financial oversight, practices, reporting, and auditing
- Human resources and operations
- Legal, compliance, ethics, conflicts of interests, and transparency
- Program management and effectiveness
- Nonpartisan activities

...The fiscal and operation concerns have been partially addressed through the 2019 Internal Controls report from Richardson & Company. That report identified material weaknesses and significant deficiencies including incorrect use of accrual accounting and treatment of grant revenues and advances, findings related to payments to the ED [Executive Director] and other staff related to payroll, retirement benefits, health insurance and cell phone reimbursements, and using pay rates that weren’t approved by the Board.

These findings indicate a weakness in financial management and controls as well as deficient payroll practices and observance of tax laws. The Internal Controls report addressed only a few of the concerns identified in the County letter, and given the significant findings in the initial report, we would like the remaining concerns addressed by the independent auditor.⁸

An article appeared in the Grass Valley Union⁹ on August 26, 2021, which addressed some of the concerns that caused the County to inform the nonprofit that they would not award contracts for any new projects until items of concern about the organization’s financial practices and internal controls were addressed by an independent auditor (letter dated August 23, 2021).

A common theme of the concerns raised can be attributed to a lack of internal controls and financial employee turnover. Internal controls are the policies and procedures that protect the assets of an organization, create reliable financial reporting, promote compliance with laws and

⁶ <https://yubanet.com/wp-content/uploads/2021/07/Fire-Safe-Council-Ltr-ajl.pdf>

⁷ <https://sci-prod-public-pdfs.s3-us-west-2.amazonaws.com/Vd0YtxLzKsVTUr9qbfhBA37veVI.pdf>

⁸ Internal Control Report 2019

Microsoft Word - {87BC532F-C1A3-4BCB-A971-D7668C261934} (sci-prod-public-pdfs.s3-us-west-2.amazonaws.com)

⁹ <https://www.theunion.com/news/fire-safe-council-audit-released/>

regulations, and facilitate effective and efficient operations. They relate to accounting, to reporting, and to the organization's communication processes. Internal controls typically include procedures for handling funds, preparing appropriate and timely financial reporting, conducting an audit of the financial statements, evaluating staff and programs, and maintaining inventory records.

In addition, industry best practices¹⁰ recommends segregation of duties to provide checks and balances of financial processes and protects an organization and its employees. It is an important control that ensures no one individual is responsible for writing and signing bank checks, payroll, invoices, purchasing, and financial reporting.

The FSC responded that many of the allegations were inaccurate and based on incomplete information; nonetheless, the nonprofit did initiate an improvement program in the summer of 2021 with the addition of a Controller and an Accounting Technician to the financial staff. They also hired an independent auditor, as requested by the County.

The new Controller and Accounting Technician began recommending changes which included segregation of duties, remediation of identified control deficiencies, and presented the Board with a review of the financial management process.

Then, in mid-June 2022, the Jury unexpectedly learned that both the newly hired Accounting Technician and the new Controller, were no longer employed by FSC. The Jury is very concerned about the continuing pattern of high turnover of financial employees given the FSC's financial challenges. In addition, the Jury's investigation determined that many of the allegations as reported in the 2021 letter from Susan K. McGuire, continue.

Financial Reporting

Nonprofit organizations are required to file a Form 990 with the IRS. It is to include salaries of officers, directors, and key employees, along with the FY financials. The filing due date is the 15th day of the 5th month following the end of the organization's fiscal tax year.

Both the IRS and the nonprofit corporation are required to disclose the information to the public. As of June 22, 2021, the IRS website listed the last FSC Form 990 filing was for FY 2019. The 2020 filing appears to be in arrears.

Failure to file the Form 990 may result in up to \$50K in fines. An organization that fails to file the required information for three (3) consecutive years will automatically lose its tax-exempt status.

In addition, the Jury has found that financial statements submitted to the Board are consistently two to four months in arrears, thereby limiting the Board's ability to make informed decisions.

¹⁰ https://www.councilofnonprofits.org/?gclid=CjwKCAjw-8qVBhANEiwAfjXLrm2dvfp3XOXtb14MS2bHfZr6einDodon-Off_bdwwMIX7EmEj56XwWBoCiwQQA_vD_BwE

The Jury also found no evidence of standard fund accounting which is used to separate grant and general fund monies.

Board of Directors Best Practices

While limited progress has been made in response to the County’s concerns, the Jury’s investigation has not revealed the development of a strategic plan to address the full magnitude of the issues. The Board has a responsibility to ensure applicable laws and regulations are adhered to. Incompetence or ignorance of legal and regulatory requirements is not an acceptable excuse for non-compliance.¹¹

The Council of Nonprofits¹² website states that nonprofit boards of directors have three primary legal duties:

1. Ensure sensible use of all assets, including facility, people, and good will.
2. Ensure that activities and transactions are advancing its mission; recognize and disclose conflicts of interest; make decisions that are in the best interest of the nonprofit corporation.
3. Ensure the nonprofit obeys applicable laws and regulations, follows its own bylaws, and adheres to its mission.

Board members can be personally liable for the nonprofit’s financial responsibility. “One notable circumstance is failure to pay withholding taxes on employee’s wages.” It is in the agency’s best interest to develop detailed policies, procedures, training, and performance evaluations. Reviewing the performance of each Board member, and how well the Board operates, will create accountability for board members to fulfill their fiduciary, fundraising, and governance responsibilities.

Conclusion

The FSC is a significant part of the County’s wildfire safety net and is dependent on grants, donations, and volunteers from the community to staff many of the valuable programs.

As an organization closely aligned to the County and depending on public funds, the Jury believes that FSC should comply with transparency, best practices, and the Brown Act. Additionally, a 501(c)(3) organization should adhere to well recognized standards, such as noted in *Best practices for 501(c)(3) (Nonprofit organizations)*.

While FSC states that significant progress and improvement has been made, the Jury was unable to verify these claims. The Jury issued multiple document requests and reminders to the

¹¹ https://www.councilofnonprofits.org/?gclid=CjwKCAjw-8qVBhANEiwAfjXLrm2dvfp3XQXtbI4MS2bHfZr6einDodon-Off_bdwwMIX7EmEj56XwWBoCiwQQA vD_BwE

¹² Source: National Council of Nonprofits, <https://www.councilofnonprofits.org/tools-resources/board-roles-and-responsibilities>

Executive Director and a member of the Board without result. As of June 22, 2022, the Jury has received none of the requested documents.

The Jury found that issues identified by the County, auditors, and the public are far from resolved, and the continued financial employee turnover may put the organization at serious financial risk.

Findings

- F1** Although the Jury issued five (5) document requests during April, May, and again in June to the Executive Director and a member of the Board, as of June 22, 2022, we have received none of the requested documents.
- F2** The Jury found that financial reporting on multiple levels, monthly Board operational reports and financial statements, and Form 990 filings were incomplete or in arrears.
- F3** The FSC's revenues, including grant funding, are not segregated under fund accounting rules.
- F4** The FSC lacks operational and financial transparency.
- F5** The FSC lacks segregation of duties, roles, and responsibilities for internal controls.
- F6** The FSC Board has not developed a strategic plan to address the full magnitude of issues.
- F7** The FSC Board is not ensuring applicable laws and regulations are adhered to.

Recommendations

- R1** The Jury recommends that the County engage an independent forensic accountant to review and report on FSC financial records and processes.
- R2** The Jury recommends FSC management provide timely monthly operational reports and financial statements to the FSC Board.
- R3** The Jury recommends the FSC Board provide requested documents to the Grand Jury.
- R4** The Jury recommends the FSC management provide requested documents to the Grand Jury.
- R5** The Jury requests the FSC Board implement fund accounting for grant revenues.

- R6** The Jury requests the FSC Board improve its level of transparency for the benefit of the community.
- R7** The Jury requests the FSC Board complete the development and implementation of roles and responsibilities as stated in the March 2022 Executive Finance Committee meeting minutes, with attention to segregation of duties and best practices.
- R8** The Jury requests the FSC Board develop and implement a five-year strategic plan for the growth of the organization.

Request for Responses

Pursuant to California Penal Code section 933.05, the Nevada County Grand Jury requires from the Nevada County Auditor-Controller, within 60 days of the publication of this report, responses for the following:

- Recommendation: R1

Pursuant to California Penal Code section 933.05, the Nevada County Grand Jury requests from the Fire Safe Council of Nevada County's Board of Directors, within 90 days of the publication of this report, responses for the following:

- Recommendations: R2, R3, R4, R5, R6, R7, R8

Responses are to be submitted to the Presiding Judge of the Nevada County Superior Court in accordance with the provisions of Penal Code section 933.05. Responses must include the information required by section 933.05.