

# **EL DORADO COUNTY 2021–2022 GRAND JURY**

## **ORDINANCE 5101 – VEGETATION MANAGEMENT AND DEFENSIBLE SPACE**

**Case # 21-09 – June 23, 2022**

### **SUMMARY**

The El Dorado County (County) Grand Jury investigated the County's implementation of its Vegetation Management and Defensible Space Ordinance (Ordinance 5101). Ordinance 5101 was approved by the County Board of Supervisors (BOS) on April 30, 2019 and amended by the BOS on February 25, 2020.

The County created a Vegetation Management Office under the Chief Administrative Office to implement Ordinance 5101. Vegetation Management was authorized to fill two and three-tenths (2.3) positions to implement the Ordinance.

In September 2021, the BOS tasked the County Chief Administrative Officer (CAO) to create a new Wildfire Resiliency and Vegetation Management Work Group (Work Group). This Work Group was chartered to review lessons learned from the Caldor Fire and to recommend fire-defense strategies.

The County does not operate any fire districts. However, within the County there are 13 independent fire districts, plus the United States Forest Service and the California Department of Forestry and Fire Protection (CAL FIRE). When the County formed the Work Group, the County reached out to these fire organizations and asked for their participation.

This Work Group includes the County CAO; CAL FIRE; the United States Forest Service; and public, private, and non-profit organizations to collaborate on lessons learned, define funding streams, and recommend a robust, community-based resiliency and vegetation management program to accelerate current efforts.

This Work Group presented the concept of creating a Wildfire Resiliency Office, tasked with implementing a countywide wildfire protection strategy, to the BOS in March 2022. The Wildfire Resiliency Office was approved by the BOS and included taking over the management of Ordinance 5101.

This report discusses the County's ongoing implementation of Ordinance 5101 and provides recommendations to the newly created Wildfire Resiliency Office based on the lessons learned from the County's difficulties to successfully implement Ordinance 5101.

## **BACKGROUND**

California State law regarding the establishment and maintenance of "defensible space" is found in Public Resources Code (PRC) Section 4291. CAL FIRE is responsible for enforcement of PRC Section 4291. CAL FIRE has also prepared practical guidelines for implementation of "defensible space" in various kinds of settings; these are summarized in an online brochure on their website (<https://www.fire.ca.gov/dspace/>)

According to the CAL FIRE website, clearing vegetation 100 feet from homes and other structures dramatically increases the chance of surviving a wildfire. This 100 feet of defensible space also provides for firefighter safety when protecting structures during a wildland fire. The area from 0 to 30 feet is called the "Lean, Clean and Green Zone". Clearing this area surrounding structures is critical and requires the greatest reduction in flammable vegetation. The area from 30 to 100 feet is called the "Reduced Fuel Zone."

State law requires that property owners must maintain a minimum of 100 feet of defensible space around all sides of their habitable structure. Defensible Space, in the context of fire control, is a natural and/or landscaped area around a structure that has been maintained and designed to reduce fire danger. In April 2019, the County BOS approved Ordinance 5101 to assist with enforcing State requirements for defensible space on unincorporated property.

Ordinance 5101 added Chapter 8.09 Vegetation Management and Defensible Space to Title 8: Public Health and Safety. This Ordinance became effective on May 30, 2019, with inspections and enforcement to begin on June 1, 2020. This Ordinance requires removal of hazardous vegetation and combustible materials situated in the unincorporated areas of the County to reduce the potential for fire and to promote the safety and welfare of the community. Vegetation management controls plant material to prevent wildfire spread and requires an ongoing commitment.

Good Neighbor and Neighborhood Protection Policy (part of Ordinance 5101) requires neighboring property owners to clear up to 100 feet of defensible space from structure(s). For example: If a structure is within 60 feet of its property line, the adjacent property owner shall assist their neighbor by completing vegetation management on another 40 feet to create a 100-foot strip of cleared land. It is recommended that neighbors reach out to neighboring property owners to coordinate defensible space efforts. Sellers of properties are required to give a disclosure of this

Ordinance to buyers. The main difference between the County's Ordinance 5101 and CAL FIRE PRC Section 4291, is that CAL FIRE will not go onto neighboring properties to reach 100 feet of defensible space.

An amended version of Ordinance 5101 was passed and adopted by the BOS on February 25, 2020. The amended version changed or added definitions and clarified some terminology. Of specific interest, "a fire chief" was deleted from the definition of Enforcement Official, and the definitions of Investigative Official and Wildfire Risk Area were added.

## **METHODOLOGY**

### **DOCUMENTS REVIEWED:**

- County Ordinance 5101 and its amended version;
- California Public Resources Code Section 4291;
- Firewise USA Recognition Program, Community Wildfire Risk Assessment, focusing on vulnerable homes and surrounding home ignition zones;
- County Memo to the BOS - Subject: Annual Review and Update on the Vegetation Management Program to the County BOS, February 5, 2021;
- El Dorado County Defensible Space Inspection Report, Revised July 8, 2021;
- 2021 Defensible Space Property Inspection Report, dated January 26, 2022;
- January 2022 Final Report on Fire Prevention Services performed in County Emphasis Area Rescue (Agreement for Services #5753) from the El Dorado Hills Fire Department (EDHFD);
- Mountain Democrat Article entitled "EDH Fire to do more defensible space inspections" published on March 14, 2022;
- PowerPoint Presentation to the BOS on March 22, 2022, entitled Wildfire Resiliency and Vegetation Management Working Group; and
- Mountain Democrat Article entitled "County forms Wildfire Resiliency Office" published on April 1, 2022. Last modified on April 3, 2022.

## **WEBSITES REVIEWED**

- County Vegetation Management Website;  
<https://www.edcgov.us/Government/CAO/VegetationManagement>
- County Defensible Space Inspections Website; and  
<https://www.readyforwildfire.org/prepare-for-wildfire/get-ready/defensible-space/>
- CAL FIRE Defensible Space Website.  
<https://www.edcgov.us/government/CAO/vegetationmanagement/pages/defensible-space-inspections.aspx>

## **INTERVIEWED**

- County Staff;
- EDHFD Staff;
- CAL FIRE Staff;
- El Dorado County Resource Conservation District Staff; and
- Current and Former BOS Members.

## **DISCUSSION**

The County adopted Ordinance 5101 to establish an annual program for the abatement of the growth and/or accumulation of weeds, grasses, shrubs, dormant brush, tree limbs, hazardous vegetation, and combustible materials on all improved, and designated unimproved, parcels within the unincorporated areas of the County. This Ordinance also applied to the maintenance of those parcels to prevent vegetation from growing back.

To implement the Ordinance, the plan was to use the following resources, including but not limited to:

- County Vegetation Management Program staff to perform inspections in identified County Emphasis Areas (CEAs) annually;
- CAL FIRE to perform inspections in identified Target Hazard Areas within the County; and

- Local fire districts to perform inspections in identified Wildfire Risk Areas within the County.

In addition to these regularly planned inspections, County Vegetation Management responded to citizen defensible space complaints to protect the health and safety of residents. Complainants must be County residents, own property within the County, or own a business that is located or operated within the County. Inspections resulting from a complaint will likely result in inspection of neighboring properties.

The County created a Vegetation Management Office to implement Ordinance 5101 and placed it under Emergency Medical Services and Emergency Preparedness & Response Division. The Program Managers [approximately three-tenths of a Full Time Equivalent (FTE) position] tasked to implement this Ordinance lacked vegetation management and defensible space experience. Two FTE positions were authorized for the Vegetation Management Office: An Administrative Assistant and a Defensible Space Inspector (DSI). There was high turnover and a lack of continuity in the DSI position. Since the passage of Ordinance 5101, the Vegetation Management Office has had an FTE DSI for approximately one-third of the time. The County did not assign any additional resources to the Vegetation Management Office since the end of 2021.

Residents could leave complaints on a recorded line by voicemail for the Administrative Assistant to address. Meetings were held regularly between the County and fire districts to triage and assign complaints to the appropriate agency. Complaints were addressed as resources were available. According to various interviews, the Grand Jury was told the complaint process became a way for neighbors to complain about other neighbors.

During the first year of the Ordinance, the Vegetation Management Office focused on program development to include the creation of a web page, community education, and voluntary compliance of the Ordinance by property owners. Property owners in two CAL FIRE-identified areas designated as CEAs received informational mailers in February 2020 notifying them that their property was in a designated CEA. They were also informed that inspections on their property would begin in 2020. A copy of the Defensible Space Inspection form was included in the mailer.

Implementation of this Ordinance was limited when the Vegetation Management Office lost its FTE DSI in December 2020. Fire Districts conducted limited inspections by referral from the Vegetation Management Office. These inspections were limited by available resources of these fire districts.

The enforcement component was never implemented because no decision was made on what County department would be responsible for the enforcement and when the penalties would be applied.

The program stalled even further when the Vegetation Management Office management staff were diverted to emergency priorities, such as responding to COVID-19 and the Caldor Fire. During these times, little progress was made within program development and community outreach. By late 2021, the Vegetation Management Office consisted of one FTE Administrative Assistant.

With no DSIs to conduct defensible space inspections, the County contracted with EDHFD on May 25, 2021, to inspect the Rescue CEA from July 1 – December 31, 2021, for \$60,000. The County requested EDHFD to inspect 237 private parcels in the Rescue CEA to verify that each parcel complied with County Codes and Ordinance 5101. EDHFD was selected because it had defensible space expertise and resources to conduct these inspections.

EDHFD conducted a total of 428 inspections on 254 parcels within, or adjoining, the CEA. In addition to the 237 parcels identified in the contract, EDHFD inspected an additional 17 private parcels that are contiguous with the borders of the CEA. Of the 428 inspections completed, all 254 parcels received a first inspection. A second inspection was completed on 104 parcels. Three or more inspections were completed on 70 parcels. EDHFD found 77% of the inspected parcels were defensible space compliant. The EDHFD Final Report recommended the County develop a comprehensive strategy that reduces the number of property owners who refuse to allow access to government inspectors to verify that the property complies with the County Code.

The County received many complaints about the lack of compliance with the Ordinance for its own properties. The County failed to address the lack of compliance due to:

- internal conflicts about which County agency was responsible for maintenance of various County properties;
- lack of sufficient County personnel to perform the maintenance; and
- difficulty contracting with outside vendors due to issues in Memoranda of Understanding with the various labor organizations representing County staff.

The BOS did not promptly follow up on the implementation of the Ordinance. The first Annual Review and Update to the BOS was via a memo provided on February 5, 2021, almost two years after the adoption of Ordinance 5101.

Due to the ongoing lack of County DSIs, on March 9, 2022, the County BOS approved \$250,020 to renew the agreement with EDHFD to conduct defensible space inspections in the County's CEAs. The 2022-2023 defensible space inspections program began April 1, 2022 and ends March 31, 2023. This agreement includes inspections for CEAs

Rescue and Diamond Springs identified by CAL FIRE. Specific emphasis areas in Diamond Springs include along Union Mine Road, Little Canyon Road, and Martina's Creek. EDHFD will also inspect Luneman and Lotus Road areas in Rescue.

The first priority of the Work Group created by the CAO was to find resources allowing the County to respond to various grant programs for defensible space funding. The Work Group contracted with the El Dorado Resource Conservation District to hire, through a California Fire Safe Council Grant, a County Community Wildfire Protection Coordinator for 18 months. They submitted an additional grant proposal to the California Office of Emergency Services for a \$10.2 million FEMA Hazard Mitigation Grant with a \$3.3 million County match.

The Work Group has created a core group with representation from County leadership, subject matter experts, public, and private entities. This Work Group has some traction, being led by an interim leader with subject matter expertise and the credibility needed to gain the respect of the many independent fire organizations. This has improved communication and coordination across the many fire organizations.

This Work Group plans to conduct a countywide assessment that will identify areas most at risk, determine measures of success, track and report on progress, and establish a broad stakeholder-based organizational structure.

Based on the Grand Jury's own investigation, it agrees with the recent Work Group findings. This includes:

- The County lacks an organized and unified approach to addressing wildfire hazard and risk.
- There is no single process for establishing priorities, coordinating projects, and allocating resources, even though efforts are taking place.
- Public outreach and messaging were not coordinated among the various agencies.
- The Caldor Fire revealed the lack of defensible space in many areas, requiring fire fighters to complete clearing ahead of the approaching fire.
- The Caldor Fire demonstrated that cooperative and strategic vegetation management projects can be successful when there is coordination and engagement of stakeholders across jurisdictional boundaries.
- The County is responsible for implementing and maintaining the County Vegetation Management Ordinance, the County Hazard Mitigation Plan, the General Plan Safety Element, and the Building Codes incorporating Wildland/Urban Interface Building Standards.

The Work Group presented the concept of creating a Wildfire Resiliency Office, tasked with implementing a countywide wildfire protection strategy, to the BOS in March 2022, which was approved. The Wildfire Resiliency Office will report to the CAO.

Other responsibilities of the Wildfire Resiliency Office include coordinating wildfire and vegetation management projects and related updates to the County Hazard Mitigation Plan and General Plan Safety Element, keeping updated with building code changes and Wildfire/Urban Interface Building Standards, facilitating program priorities for Ordinance 5101, managing Hazard Mitigation Grant Program funds, and convening a broad countywide stakeholder group.

The CAO recommended that the BOS approve the establishment of the Office of Wildfire Resilience and designate \$3,375,000 of contingency funds as the local matching funds for a \$10.2 million federal Hazard Mitigation Grant. These funds will be used to conduct defensible space inspections, home hardening work, and hazardous fuels reduction for a community in the County. The community that was selected for the Hazard Mitigation Grant is the Weber Creek Drainage area between Sacramento Hill and Texas Hill. This community was recommended by County fire professionals.

The new Wildfire Resiliency Office has only three authorized FTE staff [seven-tenths (.7) more of a position than the Vegetation Management Office] to achieve the goal set by the BOS. The Vegetation Management Administrative Assistant has been transferred to the new office, but the other two positions have yet to be filled.

Other than the defensible space inspections completed, or to be completed, by the EDHFD, as of the date of this report, Ordinance 5101 still has not been fully implemented since its approval in 2019.

Access to affordable and protective homeowner fire insurance remains a significant issue in El Dorado County and is increasingly spreading to urban areas in the County. Data collected by the California Department of Insurance shows homeowner insurance is becoming harder to find and retain for those in high wildfire areas due to recent wildfires. El Dorado County is ranked one of the top ten counties with the highest exposure to wildfires. It is important for the Wildfire Resiliency Office to consider this issue as one of its priorities.

The new Wildfire Resiliency Office's first priority is to take a leadership role, and work with the fire districts by coordinating strategies with organizations that have fire and defensible space expertise. The establishment of this new Wildfire Resiliency Office is essential to reach compliance with Ordinance 5101. As of the date of this report, the Office is still in the process of being implemented.



## **FINDINGS**

- F1. The Vegetation Management Office, tasked with the implementation and management of County Ordinance 5101, lacked expertise and adequate resources to meet the objectives of the Ordinance.
- F2. As of May 2022, the County's Vegetation Management Office has transitioned under the new Wildfire Resiliency Office.
- F3. There has been no comprehensive County plan to implement Ordinance 5101, which includes defensible space inspections.
- F4. The new Wildfire Resiliency Office has been given the responsibility to develop a comprehensive County plan.
- F5. The enforcement component of Ordinance 5101 has not been implemented.
- F6. There are County properties in violation of its own Ordinance 5101.
- F7. Availability and affordability of fire insurance is an ongoing issue in the County.

## **RECOMMENDATIONS**

- R1. The BOS should provide the new Wildfire Resiliency Office with appropriate staffing, resources, and funding, to meet its goals by December 31, 2022.
- R2. The BOS should follow up with the newly formed Wildfire Resiliency Office and receive updates on a quarterly basis from the CAO by December 31, 2022.
- R3. The BOS should direct appropriate County departments to comply with Ordinance 5101 by clearing County properties that violate the Ordinance by June 30, 2023.
- R4. The BOS should decide whether the enforcement component of Ordinance 5101 needs to be amended by December 31, 2022.
- R5. The BOS should send a letter by December 31, 2022, to the State Insurance Commissioner advocating that insurance companies provide or continue to provide insurance for rural areas.

## **REQUESTS FOR RESPONSE**

This Grand Jury report is an account of an investigation or review. It contains findings and recommendations, and those who should respond to each finding and each recommendation pertaining to matters under the respondent's control.

Please review How to Respond to an El Dorado County Grand Jury Report, a separate document included with this report.

Responses are requested in accordance with California Penal Code §933 and §933.05.

- Responses to all findings and recommendations are requested from the BOS