



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Community Planning and Development

Special Attention:

HUD Region IX Staff
Regional and Field Office Directors of
Public Housing
Regional Administrators
Responsible Entities
Public Housing Agencies
Regional Environmental Officers
Department of Hawaiian Home Lands
HUD-Approved Section 184A Lenders

NOTICE: CPD-19-07

Issued: August 21, 2019

This notice remains effective until amended, superseded, or rescinded.

Subject: Conditional No Further Action Letters Issued in Areas with HUD Investments in Hawaii's Former Waikoloa Maneuver Area

I. Purpose

This notice revisits the U.S. Department of Housing and Urban Development's (HUD) policies for the Department's existing and future federally supported properties in the Waikoloa Maneuver Area Formerly Used Defense Site (WMA FUDS) for properties and parcels which have received a Conditional No Further Action letter from the State of Hawaii Department of Health (HDOH).

II. Background

The WMA FUDS is located on approximately 180,000 acres of land on the northwest side of the island of Hawaii. From 1943 to 1946, the Department of Defense used this site as a military maneuver area where armed forces used live explosive munitions to simulate realistic battle conditions. In some cases, the munitions did not explode and unexploded ordnance (UXO), which is still capable of exploding if disturbed, is present within the Area. To date, over 100 types of munitions and explosives have been found in the WMA FUDS, which pose an unacceptable risk to the health and safety of the Area's occupants if not properly mitigated.

On January 18, 2017, HUD published [Notice SD-2017-01](#), which outlines HUD's policies for HUD-assisted properties in the WMA FUDS. The Notice established minimum requirements for existing and proposed HUD-assisted properties located within the WMA FUDS that are subject to environmental review requirements. [Notice PIH-2017-25](#), published on November 30, 2017, by the Office of Native American Programs, informed the State of Hawaii Department of Hawaiian Home Lands and all HUD-approved Section 184A Lenders of program specific

requirements for the Section 184A program.¹ In addition, Notice PIH-2017-25 confirmed that the requirements of Notice SD-2017-01 apply to the Native Hawaiian Housing Block Grant program. [Notice PIH-2018-08](#) published on May 18, 2018 by the Office of Public and Indian Housing, confirmed that the requirements of HUD Notice SD-2017-01 apply to all Public Housing and project based voucher (PBV) programs that are subject to environmental review requirements.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) requires federal agencies to incorporate environmental considerations in their planning and decision-making to avoid and mitigate negative impacts to human health and the environment. HUD's regulations implementing NEPA require environmental reviews to be prepared under either 24 CFR Part 50 or 24 CFR Part 58. Part 50 applies when HUD conducts the environmental review and Part 58 applies when a Responsible Entity (RE), a unit of general local government, state, or tribal government, conducts the environmental review. HUD's site contamination policy is included in these regulations and states that "all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property" (24 CFR 50.3(i) and 24 CFR 58.5(i)(2)). HUD and Responsible Entities rely on a State or Federal environmental remediation regulatory oversight agency site closure letter, typically called a No Further Action letter, to document compliance with the regulations at 24 CFR 50.3(i) and 58.5(i)(2). Site closure letters are written statements that no further remedial action is required, and the property is safe for its intended use.

The U.S. Army Corps of Engineers (USACE) is the lead agency responsible for FUDS clean-up and monitoring operations. In June 2018, USACE began to prepare and issue Remedial Action Reports documenting munitions clearance work for delineated properties in the WMA FUDS. HDOH is responsible for reviewing these reports and making a determination of acceptable risk for use of the subject properties. If HDOH determines that the Remedial Action Report is acceptable, HDOH will issue a site closure letter making such determinations, and, where applicable, require institutional controls and/or ongoing site management plans as needed.

III. Requirements

HUD Notice SD-2017-01 established minimum requirements for existing and proposed HUD-assisted properties located within the WMA FUDS that are subject to environmental review requirements. Notices PIH-2017-25 and PIH 2018-08 applied these requirements to PIH programs. These minimum mitigation and property use restriction requirements remain in effect until HDOH issues a property-specific site closure letter.

¹ Section 184A under 24 CFR Part 1007, known as the Native Hawaiian Housing Loan Guarantee Program, is designed to offer home ownership, property rehabilitation, and new construction opportunities for eligible Native Hawaiian individuals and families wanting to own a home on Hawaiian home lands. 12 USC 1715z-13b(k)(2)(B)(i) and 24 CFR 1007.20(b)(2)(i) require that homes be decent and safe in order to receive a Section 184A loan guarantee.

Conditional No Further Action (CNFA) letters issued by HDOH that meet the requirements detailed below serve as site closure letters under HUD's regulations at 24 CFR 50.3(i) and 58.5(i)(2). Properties that have received a CNFA letter from HDOH that meets the requirements below are no longer subject to the restrictions contained in HUD Notices SD-2017-01, PIH-2017-25, and PIH-2018-08. This notice does not alter the restrictions in the HUD Notices and those restrictions remain in place for properties that have not received a CNFA letter.

To ensure compliance with 24 CFR 50.3(i) and 58.5(i)(2), HUD (for Part 50 reviews) and REs (for Part 58 reviews) must ensure that HDOH CNFA letters for existing and proposed HUD-assisted properties located within WMA FUDS parcels meet the following requirements:

- A. All project activities must comply with the conditions and institutional controls identified by HDOH in the CNFA letter. Conditions must include but are not limited to:
1. At minimum, all future subsurface activities must be conducted following the guidance and conditions stated in the [*Areawide Environmental Hazard Management Plan, Waikoloa Maneuver Area, Island of Hawaii*](#) (AEHMP);²
 2. All activities at HUD-assisted properties must be accompanied by an ongoing safety awareness program to educate occupants and visitors about the possible presence of UXO;
 3. All subsurface activities must be conducted with UXO Construction Support provided by a certified UXO Contractor, as described in the AEHMP; and
 4. Large-scale developments (as described in the AEHMP)³ require submission and approval of a Site-Specific Environmental Hazard Management Plan (SSEHMP) prior to construction.

HUD and REs must also ensure that the following notification requirements⁴ for existing and proposed HUD-assisted properties located within WMA FUDS parcels that receive an HDOH CNFA letter are met:

- B. All owners of properties that are or will be HUD-assisted⁵ must sign the Acknowledgement of Receipt in the CNFA letter and follow notification requirements to

² While use of the AEHMP is voluntary for some landowners, the HDOH Conditional No Further Action Letters are expected to require the use of the AEHMP for all subject properties.

³ Large-scale developments include, but are not limited to: residential subdivisions, apartment buildings, schools, shopping centers, new roads, solar and wind farms, utilities corridors, commercial structures, and major modifications to complex existing structures. Please contact the HDOH Hazard Evaluation and Emergency Response Office at 808-586-4249 to determine if a planned development is large- or small-scale.

⁴ While not all of the following requirements may be contained in the applicable HDOH CNFA letter, all of the following requirements must be met in order for the HUD Notices regarding the WMA FUDS to no longer apply to the subject property.

⁵ If an owner of Housing Choice Voucher rental units that do not require environmental review receives a CNFA letter from HDOH, the owner shall be permitted by HUD or the RE to remain subject to the requirements in Notice PIH 2018-08 for the PHA to provide UXO educational training and obtain a HCV participant acknowledgment, in lieu of HUD or the RE ensuring owner compliance with the conditions of the CNFA letter and the notification requirements of this notice.

ensure current and future stakeholders are notified the property is located within the WMA FUDS. Notification requirements must include but are not limited to:

1. Notice to lessee, purchaser, or recipient that the property is in the WMA FUDS prior to lease signing, closing on purchase, or commencing work on the project site, and notification to the HDOH Hazard Evaluation and Emergency Response (HEER) Office of any sale, lease, or transfer of property;
2. New title transfers must include deed notice of property location in WMA FUDS and notice of conditions in the CNFA letter and the requirements in the AEHMP;
3. Ensure written public education materials are provided and community-wide public education campaigns are utilized; and
4. As long as the property will continue to receive HUD assistance or be subject to HUD use restrictions, in the event of sale, lease, or transfer of the property, the new owners or lessees must provide written notice in the form of a Certification or Acknowledgement to the HEER Office that they have been informed of the conditions in the CNFA letter and agree to follow the guidelines in the AEHMP.

For additional information, please contact Morgan Griffin at 415-489-6731 or by email at Gregory.M.Griffin@hud.gov. For guidance on HUD programs covered by environmental review requirements, please contact your [Program Environmental Clearance Officer](#) or HUD Honolulu Field Office program area point of contact.