



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special attention of:
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Department of Hawaiian Home Lands
Notice: CPD-2023-09
Issued: October 5, 2023
Expires: This Notice is effective until
amended, superseded, or rescinded

SUBJECT: Revisiting Environmental Review Requirements for Unexploded Ordnance for HUD Funding in Hawaii's Former Waikoloa Maneuver Area

I. Purpose

The notice revisits the environmental review requirements for unexploded ordnance (UXO) for HUD Funding expended in Hawaii's Waikoloa Maneuver Area Formerly Used Defense Site (WMA FUDS). Specifically, this Notice specifies the environmental requirements and allowances for proposed HUD-funded projects within the WMA as they relate to UXO contamination for the purposes of HUD's contamination regulations at 24 CFR 50.3(i) and 24 CFR 58.5(i)(2). This Notice covers all HUD programs and projects subject to HUD's environmental review regulations at 24 CFR Parts 50 and 58. It also revisits the requirements for Conditional No Further Action (CNFA) letters for sites located within the WMA FUDS. This notice *only* applies to HUD projects located within the WMA FUDS.

II. Background

The WMA FUDS is located on approximately 180,000 acres of land on the northwest side of the Island of Hawaii. U.S. Navy training operations on the site from 1943 to 1946 resulted in the presence of UXO within the Area, which is still capable of exploding if disturbed. Since the Navy's disposition of the land, the U.S. Army Corps of Engineers (USACE) has taken the lead on remediation of the WMA FUDS, including UXO remediation. As USACE completes its remediation of a particular property within the WMA FUDS, it issues a Remedial Action Report, which is then reviewed by the Hawaii Department of Health (HDOH). If HDOH is sufficiently satisfied by the report it will issue a CNFA letter or a No Further Action (NFA) letter for the particular property. These letters serve as sufficient documentation that no further remedial action is required at the property, and that it is safe for its intended use, satisfying the requirement in 24 CFR 50.3(i) and 58.5(i)(2) as it relates to contamination from the WMA FUDS. HUD's initial guidance on CNFA letters, which is being updated in this notice, is

provided in [Notice CPD-19-07, Conditional No Further Action Letters Issued in Areas with HUD Investments in Hawaii's Former Waikoloa Maneuver Area.](#)

On January 18, 2017, HUD published Notice [SD-2017-01](#), the first of several Notices related to UXO contamination within the WMA FUDS.¹ That Notice outlines HUD's policies for HUD-supported properties in the WMA FUDS. The Notice establishes minimum requirements and allowances for existing and proposed HUD-assisted properties located within the WMA-FUDS that are subject to HUD environmental review requirements. Among these requirements and allowances, new non-ground disturbing activities are allowed with certain conditions in project sites where USACE has removed UXO from the surface and/or the land surface is covered with permanent impervious surfaces such as buildings and roads.

Since publishing these Notices, HUD has received many inquiries on the requirements for non-ground disturbing activities within the WMA FUDS. This Notice revisits the allowances and requirements for non-ground disturbing activities on properties within the WMA FUDS that have not yet received a CNFA letter from the HDOH. It also revises requirements for CNFA letters themselves, which may potentially apply to ground disturbing projects, as well in section IV.

III. Clarification of Non-Ground Disturbing Activities Allowed within the WMA

Under HUD's existing interpretation of its contamination regulations, new, non-ground disturbing activities on sites that have not received a CNFA or NFA letter from HDOH *are* allowed to receive HUD funding under certain conditions. This Notice revisits those conditions and reminds HUD Responsible Entities (REs) and recipients that they are able to approve or request HUD funding for certain proposed projects within the WMA *even if the HDOH has not yet issued a CNFA or NFA letter for the project site*. HUD funding may be used to acquire or lease property from others without a CNFA or NFA letter for the project site from HDOH, *only* if there are no ground disturbing activities included in the project and the property meets the conditions in this notice.

A. HUD Funding Eligibility for New, Non-Ground Disturbing Projects Within the WMA FUDS

New non-ground disturbing activities such as installation of solar panels on roofs, HVAC systems, and bathroom fixtures, window replacement, and roofing repairs are allowed in project sites where USACE has removed UXO from the surface **and/or** the land surface is covered with permanent impervious surfaces such as buildings and roads when certain conditions are met, *regardless of whether HDOH has issued a CNFA or NFA letter for the project site*.

These conditions include:

- Notice to lessee, purchaser, or recipient that property is in the WMA FUDS prior to lease signing, closing on purchase, or commencing rehabilitation;

¹ Subsequently, the Office of Native American Programs published Notice [PIH-2017-25](#) on November 30, 2017, and the Office of Public Housing published [Notice PIH-2018-08](#) on May 18, 2018.

- New title transfers must include deed Notice of property location in WMA FUDS and deed restrictions on disturbing covered surfaces; and
- Ensure written public education materials are provided and community-wide public education campaigns are utilized.

This means that for new non-ground disturbing activities, if USACE has removed UXO from the surface of the project site with confirmation from modern sensing technology and/or the land surface is covered with permanent impervious surfaces, and the above conditions are met, HUD's contamination requirements for UXO have been satisfied regardless of where the activity is located within the WMA. The RE must provide documentation that USACE has removed UXO from the surface in the Environmental Review Record. Examples of projects that would be ground disturbing and thus not allowed under this section of this Notice include planting trees/landscaping, sidewalk replacement, and site clearance and site preparation including removing structures and vegetation.

Under Notice SD-2017-01 and all subsequent related Notices, "covered with permanent impervious surfaces" means that the entirety of the ground of a project site² is capped by a permanent, immovable, impermeable, solid surface. Examples of a qualifying surface include concrete or asphalt roads, single and multifamily residential buildings whose lowest floor directly touches the ground, and non-residential or mixed-use buildings whose lowest floor also touches the ground. This does not include buildings constructed using "post and pier" foundations, where a crawl space under the floor exists that allows residents to crawl or walk under the structure.

HUD notes that the above process and conditions satisfy compliance with HUD's contamination regulations only as it relates to UXO contamination; Responsible Entities, recipients, and applicants must still consider the presence of all other contaminants. Additionally, exempt and categorically excluded activities listed at 24 CFR 58.34, 58.35(b), and 50.19 for projects within the WMA FUDS are not subject to the contamination regulations at 24 CFR 50.3(i) or 58.5(i)(2).

Additionally, HUD program funds may be used for any testing and mitigation requirements, notification requirements, or educational materials associated with both ground disturbing and non-ground disturbing activities. Please contact your specific HUD program contact for any specific funding eligibility questions.

IV. Conditional No Further Action Letters

HUD is also revising the requirements for CNFA letters issued by HDOH and associated project activities that were set out in [Notice CPD-19-07](#). Notice CPD-19-07 lays out requirements for CNFA letters issued by HDOH for sites within the WMA FUDS in order for the letters to serve as site closure letters under HUD's contamination regulations at 24 CFR 50.3(i) and 58.5(i)(2). In light of recent developments, HUD is revising these requirements to clarify the HUD regulatory requirements and assist REs and recipients within the WMA FUDS.

² For the purposes of this Notice, "project site" means the entire property receiving HUD assistance. This includes, for example, the land surrounding a vertical housing structure on the same property.

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 and associated project activities for existing and proposed HUD-assisted properties located within WMA FUDS parcels now meet the following requirements:

- A. All project activities must comply with the conditions and institutional controls identified by HDOH in the CNFA letter and Areawide Environmental Hazard Management Plan, Waikoloa Maneuver Area, Island of Hawaii (AEHMP). They must also meet the following conditions:
 - 1. 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; and
 - 2. Large-scale developments (as described in the AEHMP) require submission and approval of a Site-Specific Environmental Hazard Management Plan (SSEHMP) prior to construction.

CNFA letters issued by HDOH that meet these and any other site-specific conditions will be sufficient to serve as a site closure letter per 24 CFR 50.3(i) and 58.5(i)(2). All other requirements for projects proposed within the WMA FUDS remain in effect.

V. Contact Information

For additional information, please contact Glenn Schroeder at Glenn.A.Schroeder@hud.gov. For project specific questions, please contact Morgan Griffin 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.