



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CEMP-CED

6 February 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Formerly Used Defense Sites (FUDS) Building Demolition/Debris Removal (BD/DR) Project Eligibility Clarifications Interim Guidance Document (IGD)

1. PURPOSE: This IGD details the process all Divisions and Program/Project Management Districts who manage and/or execute FUDS projects shall follow to determine the eligibility of BD/DR projects.

2. APPLICABILITY: This guidance is applicable to all Divisions and Program/Project Management Districts who manage and/or execute FUDS projects. This process will be incorporated into the next revision of Engineer Regulation (ER) 200-3-1 and shall remain in effect until rescinded or otherwise superseded.

3. REFERENCES:

a. DoD Manual (DoDM) 4715.20, Defense Environmental Restoration Program (DERP) Management, 9 March 2012.

b. ER 200-3-1, Formerly Used Defense Sites Program Policy, 10 May 2004.

4. REQUIREMENTS AND PROCEDURES:

a. General requirements for the evaluation of FUDS properties for BD/DR projects are in reference 3.b. This interim guidance provides additional clarification to evaluating the eligibility of a BD/DR project.

b. Pursuant to DoDM 4715.20, 9 March 2012, Glossary, page 89, BD/DR is defined as: "The demolition and removal of unsafe buildings and structures at facilities or sites that are or were under the jurisdiction of the Secretary of Defense and owned by, leased to, or otherwise possessed by the United States (including Governmental entities that are the legal predecessors of the DoD or the DoD Component) and that were unsafe at the time of transfer and have not been beneficially used since transfer by any other party. One of three DERP program categories."

CEMP-CED

SUBJECT: Formerly Used Defense Sites (FUDS) Building Demolition/Debris Removal (BD/DR) Project Eligibility Clarifications Interim Guidance Document (IGD)

c. Pursuant to DoDM 4715.20, 9 March 2012, Paragraph 3.c.(2)(a), page 23: “USACE may conduct BD/DR environmental restoration activities at FUDS properties if there is evidence that the DoD left the building or the debris in an unsafe condition at the time of disposal.”¹ Inherently hazardous conditions² that existed at the time of disposal are not eligible for ER,FUDS funding.

d. Worksheet B-2 in Appendix B of ER 200-3-1 (see reference 3.b. above) shall be used to document BD/DR eligibility under the FUDS program. For BD/DR projects where hazardous substances are not present, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process will not be followed. If an actual or threatened release of a CERCLA hazardous substance, pollutant or contaminant as a result of Department of Defense (DoD) activities (including munitions and explosives of concern and/or munitions constituents is identified during the performance of BD/DR project category activities, an appropriate response action under the installation restoration program (IRP) or military munitions response program (MMRP) categories must be conducted. All such responses are to be conducted in accordance with CERCLA and the National Contingency Plan, other applicable laws, and applicable DoD and Army policies. If not incidental to the BD/DR project, the new IRP or MMRP project may require a separate project recommendation and approval than the BD/DR project.

e. FUDS BD/DR project eligibility also must consider the following:

(1) A project is not allowed where the hazard is a result of neglect or deliberate or careless acts by an owner or grantee subsequent to DoD control, regardless of whether the deed or disposal document required the owner or grantee to maintain the property improvements (see DoDM 4715.20, 9 March 2012, Enclosure 3, Paragraph 3.c.(3)(a)).

(2) A project is not allowed at sites where the BD/DR at the property would primarily benefit private interests (see DoDM 4715.20, 9 March 2012, Enclosure 3, Paragraph 3.c.(3)(c)). For FUDS, subsequent to a facility or site being owned by, leased to, or otherwise possessed by the United States and under DoD jurisdiction, the property must have continuously been owned by a State, Local Government, or an Alaskan Native Corporation to be eligible for a BD/DR project.

¹ The date that the property was disposed of is important as the disposal agency must have disposed of the property prior to 17 October 1986. Also since in some cases the disposal agency may have held some properties for long periods prior to final disposal and the unsafe condition of the structure/building may have arisen during the period when DoD was not responsible for maintaining the property, any hazardous conditions arising after the date the disposal agency assumed accountability for the property from DoD are not eligible for ER,FUDS funding.

² An “inherently hazardous condition” is associated with a structure that in and of itself (even in good condition) presented a clear danger, and may cause death or serious injury to a person exercising ordinary and reasonable care. It includes those buildings, structures, or appurtenances that are considered operational assets of the property regardless of whether the post-DoD owner used or did not use the asset. Examples of inherently hazardous conditions which would not be considered eligible hazards include, but are not limited to, swimming pools, sumps, utility systems, sewer systems, and sewage treatment plant features such as lagoons and digesters. Subsequent property owners have an obligation to maintain their property and protect parties from hazards such as attractive nuisances.

CEMP-CED

SUBJECT: Formerly Used Defense Sites (FUDS) Building Demolition/Debris Removal (BD/DR) Project Eligibility Clarifications Interim Guidance Document (IGD)

(3) A project is not allowed at sites where an owner subsequent to the DoD has received benefit from the Government in lieu of property restoration (e.g., by a payment or offset in the purchase price) (see DoDM 4715.20, 9 March 2012, Enclosure 3, Paragraph 3.c.(3)(d)).

(4) A project is not allowed which would involve a partial demolition of a structure (i.e., the demolition must be of the entire building or structure to be allowed) (see DoDM 4715.20, 9 March 2012, Enclosure 3, Paragraph 3.c.(3)(e)).

(5) A project is not allowed involving structures or debris that were altered or beneficially used by owners or occupiers subsequent to DoD control (see DoDM 4715.20, 9 March 2012, Enclosure 3, Paragraph 3.c.(3)(f)).

(6) A project is not allowed at sites where the lease, permit, deed, or other transfer document relieves the Government from the obligation of property restoration or imposes on another party a requirement to perform restoration (see DoDM 4715.20, 9 March 2012, Enclosure 3, Paragraph 3.c.(3)(g)).

5. EFFECTIVE DATES: The requirements and procedures set forth in this IGD are effective immediately. They will remain in effect until ER 200-3-1 is republished.

6. DISTRIBUTION: Approved for public release; distribution is unlimited.

7. POINT OF CONTACT: For additional information, please contact Mr. Julian Chu, FUDS National Program Manager, at 202-761-1869.



CHRISTINE T. ALTENDORF, PH.D., P.E.
Chief, Environmental Division
Directorate of Military Programs

DISTRIBUTION:

Commander, Great Lakes and Ohio River Division
Commander, North Atlantic Division
Commander, Northwestern Division
Commander, Pacific Ocean Division
Commander, South Atlantic Division
Commander, South Pacific Division
Commander, Southwestern Division
Chief Counsel
Director, Environmental and Munitions Center of Expertise