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MPSC -- MILITARY LAND

NOTES TO FILE RE CONVERSATION WITH GRANT REYNOLDS, AF GEN COUNSEL OFFICE (OX 7 7479)

Reynolds, a friend of Peter Bewley's, returned my call around 12:45 p.m. today (9/5). I told him we were representing the Marianas, and that I was working on issues relating to land for the military base, and wanted to talk to him to get informed about the practice and policies of the armed forces in this regard. He told me he would be glad to help within the limits of his responsibility to his client (i.e., the US: per Bewley, Reynolds has worked on Mariana problems for the Air Force).

Reynolds told me the key document is DOD Directive 4165.16, and that the Army regs were useful to me because the Army is the agent for the Air Force in such matters. However for the Marianas, the Navy regs would be best, because the Navy Facilities Engineering Command will have lead responsibility for the construction of the base. Generally, for a purchase of land over \$50,000, DOD must get line item authority in the Military Construction Authorization Bill (this is usually done in a larger lump sum for a given base), and then get the appropriation. After that, 10 USC 2662 still has to be complied with (approval of Armed Services Committees). He also said that 10 USC 9773 and 2663 are considered entirely procedural, and grant no substantive rights to acquire land.

With respect to leasing, I was told that there are two kinds of leasing to be concerned about: leasing buildings and facilities and leasing for one year for real and personal property. The power to do both is granted in the annual DOD bill in the O&M section (buried). The money is available only for one year. DOD gets around this by entering into multi-year leases with irrevocable options; the money is then provided each year as needed. As a practical matter, Congress never fails to appropriate the necessary amount. 10 USC 2672 allows for acquisition, including temporary use if total amount is under \$50,000; this is first real authorization for long term leasing. Note that 10 USC 2675 allows 5 year leases for off base facilities in foreign countries.

The US has entered into a number of long term leases for bases in this country; on these permanent construction was placed. This was done in the early and middle 50's when US was anxious to get SAC bases in place. They don't like to do it, however, because they have had problems: on one base the lease did not protect the US right to the structures, so theoretically when the lease terminates, the lessor gets all the improvements. Two examples of large leased bases in US are Glassco Airforce Base in Montana and Williams Airforce Base in Arizona. A couple of the leases at Williams have options to buy. Money to pay the rent comes from DOD O&M appropriations. DOD records all real property transactions, like long term leases, and the Corps of Engineers keeps copies, from whom they should be available. There probably is as well a standard form for lease and purchase contracts.

With respect to foreign countries, the practice is more ad hoc. The US does not acquire title. Small projects might be ~~just~~ handled by a short term lease or license, but ~~large~~ larger projects are handled either by ~~a~~ a mutual defense agreement by which the host country provides the land as its part of the bargain or, less often, by ~~a~~ the US renting land. ~~Exmapx~~ Examples of the latter are Ethiopia, where we actually pay rent, and Libya (before we got kicked out) where we made a special annual payment to them which ~~exyzome~~ everyone knew was rent.

DOD is bound by the Uniform~~x~~ Relocational ~~and~~ Land Acquisition Act, which applies to TTPI. Under that law they have to try to negotiate and have to offer the owner the appraised value. They get the appraised value from the Naval Facilities Engineering Command. ~~Under~~ The Military Construction Appropriation Act prohibits the use of money appropriated by it for payments of more than 100% of the value of land which is purchased. They ~~gk~~ get around this -- if the owner wants more than the government appraisal and ~~kk~~ DOD wants to pay more -- by getting the appraisal changed or taking ~~ak~~ lesser interest (appraisals are very bad). However, this 100% requirement does not apply to leased land, though they will still get an appraisal before entering negotiations.

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Reynolds also said that the military ~~planx~~ plainly intends to acquire title at Tinian, and that a friendly condemnation suit at the end of the whole thing might be best to eliminate clouds on the title. The problem is that there may be no eminent domain power ~~exzkhez~~ in the ~~andxonxxx~~ TTPI. No District Court has jurisdiction, he pointed out, of a ~~xxx~~ condemnation suit. He also said that Interior takes the position that there is no eminent domain power~~x~~ in the territories for the US government; that the power rests with the local government. He found this ~~x~~ out ~~k~~ when he wanted to solve a problem he had by condemnation and ~~Exzkzize~~ Interior said no.

Many things to be checked, but two questions I forgot ~~kkz~~ to ask Reynolds: size, scope, cost of bases leased (can get this from agreements, however~~x~~), and any such bases in other territories (might get this by asking Corps for copies of leases).