



CREST

in the War on Terrorism

BY DWAIN D. McMULLEN, ASA

The US Army Corps of Engineers (USACE) Contingency Real Estate Support Team (CREST) plays a significant role in the global war on terrorism. Since November 2001, CREST has deployed 40 USACE civilian volunteers who performed real estate activities in eight different countries in Southwest Asia and Europe, supporting Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF).



Mike Taylor, left, and Jim Burch in Baghdad.

CONTINGENCY OPERATIONS

CREST personnel orchestrates numerous real estate activities, including leasing land and facilities for operations, providing guidance to the theater commander on real estate matters, and coordinating real estate issues between the local army command and the host nation's real estate authority. By the end of December 2003, CREST executed some 280 leases for over \$39 million for OEF and OIF. However, we have secured only a few leases in Iraq since we have substantially utilized palace facilities and military compounds. Land and facilities are needed for a variety of reasons including staging areas, bed down or housing, warehouses, fuel storage, office space, airport and port facilities, railheads, perimeter security and other uses.

USACE established CREST after the first Gulf War, but civilian deployments to provide real estate actions and expertise have occurred since 1965 when we were needed in the Dominican Republic. Lessons learned during Operation Desert Storm proved that early deployment of real estate teams expedited operations and saved leasing or claim expenses. During the first Gulf War and subsequent contingencies, USACE real estate professionals deployed alongside military personnel as a standard part of operations (per Army doctrine). This provides the active duty forces with the technical expertise of the USACE civilian workforce. Further, we fully leverage technology, resources and reach-back capability. The ability to contact other experts based in the United States allows significant advantages. We leverage the full spectrum of our workforce, we place fewer personnel in harms way, and we save money.

CREST currently boasts nearly 80 professional real estate volunteers who can deploy (on very short notice) with the first troops to support contingency operations. Once in theater,

CREST teams become a theater-level asset, conducting real estate operations in support of US forces there, and acting as the theater commander's technical authority on real property. Our annual CREST training includes 20 to 30 cream-of-the-crop real estate employees from around the country. These real estate experts have always been eager and excited to be called upon to support US forces during contingency operations. Our CREST teams need to be a part of those "first in" and the "last out" to execute the necessary real property leases and to close-out any remaining lease actions and potential claims.

"Not since World War II has the [United States] been an occupying force," said Charles Barton, team leader for CREST in Iraq and the chief of real estate in Mississippi Valley Division. "For former deployments to Saudi Arabia, Bosnia, Croatia, Macedonia and Kosovo our real estate experts were able to negotiate leases before US troops moved into place. But in Iraq, land and facilities were first occupied in the course of war."

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"One very large area of some 1,700 lots (a partially developed subdivision in Northern Baghdad identified by coalition forces as 'Red Falcon') has our current attention. This subdivision includes vacant lots, completed homes, and homes under construction, all of which are now occupied by coalition forces," Barton said.

On-going Lease Activities

Authorization for the United States use of property in a foreign nation (during peacetime) is generally initiated through diplomatic channels since most nations laws prohibit other sovereign nations from acquiring real property interests absent specific agreement. When recurring military usage is expected, the most common form of agreement is the Status of Forces Agreement (SOFA). The most significant SOFA in Europe is the North Atlantic Treaty Organization or NATO SOFA. This SOFA generally allows member nations (approximately 20) to use one another's property at nominal or no cost for accepted military purposes in support of NATO activities. The United States enjoys perhaps its greatest use rights in Europe through provisions of "technical arrangements" of the NATO SOFA with Germany. Under those technical arrangements many US military needs are actually satisfied by the German government acting as an intermediary for the United States. Numerous other diplomatic agreements afford the United States use of property in Europe on favorable terms. The Dayton Accord, which ended the Balkans

conflict in 1995, provides the peacekeeping forces limited use free of charge.

Although in many instances and locations, we expect the host nation to provide adequate real estate interests for our use in the case of conflict; and when the host nation government is not functioning, we would proceed to lease land and facilities necessary for our operations from private property owners. Sometimes it is not easy to identify the landowners. Sometimes records are accurate and available, but not always. We are often dealing with high-level government officials to confirm data and to enhance our leasing activities.

The US Army conducts regular or routine real estate operations in Europe through its Installation Management Agency, Europe (IMA-E), Real Estate Branch located in Heidelberg, Germany as a part of US Army Europe.

"The Army's real estate activities in Western Europe are managed through field offices located in Germany, Italy and the Benelux (Belgium, the Netherlands and Luxembourg)," IMA-E Real Estate Deputy James Phillips said. "Typical real estate actions consist of installation support and housing support leasing. Peacekeeping operations in the Balkans are supported in seventeen former eastern block countries ranging from the Ukraine to Romania, as well as portions of Africa and Asia in support of the US European Command or EUCOM." IMA-E area of operation includes Turkey where they saw recent contingency operations to support OIF.

Authority to conduct basic real estate operations is inherent in overseas military major commands. General lease authority is via 10 USC 2675, which authorizes leasing of structures and related land for purposes other than family housing. A lease term of five years is authorized and lease renewals at the option of the government are allowed. The rents are paid from annual or specific appropriations. Military family housing lease authority, from 10 USC 2828, authorizes leasing of family housing for a term of up to 10 years, with renewals at the option of the United States. There is a congressionally mandated limit on expenditures. Actions under this authority may require congressional notice and approval prior to lease execution. Leases are negotiated and paid either in US dollars or in the currency of the host nation. Rent for leases negotiated in the currency of the host nation is adjusted by the exchange rate as of the date of the rental payment.

Special authority for contingency or emergency leasing actions, and support to peacekeeping missions is granted by the secretariat. In the case of the Army, this comes from the deputy assistant secretary of the Army for Installations and Housing. Delegated authority for peacekeeping operations in Western Europe is capped at \$5 million per lease per annum. Current leasing through IMA-E exceeds \$50 million per year. The general principles are to adhere to international conventions, conform to

international agreements, honor host nation laws, minimize acquisition areas, and follow appropriate acquisition policies.

In the Republic of Korea (ROK), for example, the host nation provides all lands and facilities other than family housing. The ROK would also provide lands and facilities needed for any contingency operations. Our mission would be to assist the host nation with selection and analysis of land and facilities that might be needed for the support of US forces.

The US Navy also has a large-scale active leasing program that reaches around the world said Scott Whiteford, chief appraiser for Naval Facilities Engineering Command in Washington, DC. This



Greg Dorward, Pittsburg District; Iraq landowner; and Ghee Pappen, Savannah District at the first lease acquired in Baghdad.

lease program consists of approximately 200 leases with total annual rents in excess of \$50 million. Major areas of lease activity include Italy, Greece, Spain, Portugal, France, Djibouti, Iceland, Bahrain, Egypt, United Kingdom and United Arab Emirates.

Leasing actions require authorization at an appropriate level in the chain of command. This level varies based on the rental amount, type of property and legal authority for the lease. Funding comes from a different source than the lease authority. Every effort is made to ensure that lease awards are based on full and open competition as required by the Competition in Contracting Act of 1984 implemented in the Federal Acquisition Regulations (FAR). An individual appropriately authorized or warranted executes the leases.

"We want to do the right thing by private property owners, but we face many obstacles," said Mike Taylor, former CREST team leader from Louisville District. "Treating individuals fairly is extremely important to build goodwill with the local Iraqi populace."

Much of the property in Iraq was nationalized in the early 1970s, which created a lot of government ownership. Much of that farmland was leased back to individual farmers, the same families that had been on it for hundreds of years, Taylor added. Jim Burch, real estate appraiser from Jacksonville District, used numerous sources for developing property values in Iraq, including Turkish values for agricultural land.

"Agricultural prices will more closely align than some other categories of real estate," Burch said. "Overall though, the market

in Iraq is extremely low – lower than any other country that I have been in. It's very similar to Bosnia, where under communist rule there was no free flow market.”

While in Kuwait earlier in the year, Burch was able to develop several Iraqi contacts that have helped provide data on historic Iraq real estate markets.

Dennis Hogan, retired Chief of Real Estate Southwestern Division, Dallas, TX, at an undisclosed bunker location (could this be a spider hole?)



“Developing comparable data for valuations is extremely difficult in Iraq. There are no professional real estate organizations to contact, and no known databases exist,” Burch said.

Information contained in deeds is not the same as in the United States. The deeds show ownership, but rarely identify the seller. The price paid is sometimes stated, but not necessarily considered accurate or reliable. The best sale verification would be to line up as many ingredients as possible – buyer, seller, deed, contract and broker. The property location and dimensions are also often difficult to discern.

Challenges

Bruce Sharp, senior staff appraiser with Atlantic Division, Naval Facilities Engineering Command in Norfolk, Va. said the challenges in overseas leasing include the need to follow US laws and regulations for leasing actions while negotiating a lease in a country with a different system of laws and customs related to real estate ownership and leasing. For example, local law and/or custom may require payment of rent in advance. 10 USC 2396 prohibits advance payment of rent unless required by local law or custom.

“In this case, we must determine and document the existence of this exception prior to negotiation and execution of the lease,” Sharp said.

In some countries, a value added tax may be charged to the developer during the construction of the facilities. In some cases, however, all or part of the construction for lease by the US government may be exempt from these taxes.

“The taxes can add significantly to the cost of construction (and therefore the cost of rent) and it is vital to ascertain the applicability of these taxes prior to negotiation of the lease,” Sharp said.

The need to provide facilities that meet the Army or Navy standards is another major challenge. These standards can vary substantially from accepted national codes, construction practices or market standards. The US seismic safety construction standards are sometimes higher than those of the host nation, and recent antiterrorism force protection measures are also substantial. The national building code may allow use of materials that are cheaper, but are environmentally unacceptable under US standards. Often housing units available in the market have smaller rooms, lack storage closets, lack air conditioning, or other amenities expected by US families. These differences may mean that existing facilities cannot be adapted to meet the US requirements. In these situations, lease/construction projects have proven to be a valuable means of providing facilities. Substantial effort is often required to arrive at a facility design that is acceptable, but not so alien to local market standards as to leave the lessor with a property that is perceived to be unmarketable at the end of our occupancy. Failure to bridge this difference can result in excessive rental demands by the lessor based on a perceived lack of residual value at the end of the initial firm term of the lease.

The concept of private ownership in former eastern block nations is only now coming to maturity. Prior to the fall of communism, most properties were “socially owned” with varying levels of “use rights” granted to individuals, which continues to complicate property titles. The party in possession of a property may or may not have the right to grant use rights to another party. Further, documentation of ownership or use right often leaves much to speculation and must be viewed with a degree of healthy skepticism. Because the ownership/use right issue is in a state of evolution it is often difficult to develop the level of arms-length free market transaction data necessary to derive value. Traditional fee ownership with rental to tenants is not the norm. The fact that fee transactions are heavily taxed further complicates ownership determination. Consequently, many larger tracts of property are informally divided among generations of heirs without benefit of recorded documentation. Frequently, a party will represent him or herself as the owner, when in fact that party's interest may be only fractional. Caution is essential in conducting business here and sound legal advice as to customs and ownership is a must.

“Communication, including the need to provide matching documentation in both English and the language of the host nation in some cases, is essential,” Sharp said. “In some countries, not only is the language different, but also the alphabet is dissimilar.” Sometimes both a translator and an interpreter are

needed to negotiate and consummate the lease action to ensure accuracy and proper understanding.

The identification of the owner(s) may be extremely difficult if real property records are not well maintained, or available. “In Iraq, we find there are many fake deeds and a lot of fraud,” Burch said. Care must be exercised to ensure that the proposed lessor has an adequate interest in the property to support the proposed lease. He also indicated there are many brokers working in Iraq, but it was not always easy to contact them.

“The security and mobility often prevented our team from scouting neighborhoods as one would here in the United States; and there are no licensing requirements or ethical standards,” Burch said. “You find brokers setting up shop out of their homes, and posting a map as to the area they specialize in, both for sales and rentals.”

Sometimes we enter into retroactive leases, when our need for the property is urgent, because we could not identify the owner in a timely fashion. Lease payments in Iraq and Afghanistan are paid in cash, usually in US dollars.

Standards regarding responsibility for maintaining leased properties may vary widely from country to country and need to be clearly understood and spelled out in each lease. Restoration

requirements are another issue that must be fully negotiated and understood prior to completing the lease negotiations. A condition survey at the beginning of possession (as well as at termination of the lease) is crucial. Damages are claimed in many cases.

Conducting real estate activities overseas is a constant challenge, and the mission often expands to new nations and new environments. Lease formats tend to change from operation to operation. Variances in language, culture and laws require careful investigation and caution. Security is a constant concern in unstable areas or areas of conflict. Fortunately, the United States has been engaged in real estate activity in the European Theater for over 50 years and is well served by its depth of experience and desire to succeed. ♦

Dwain D. McMullen, ASA is Chief Appraiser for the US Army Corps of Engineers in Washington, DC. In March 2003, McMullen assumed the role as Program Manager for the Corps' CREST. Prior to working for the Corps, he was employed as a County Supervisor for USDA Farmers Home Administration in Indiana for over seven years. McMullen represents the Army on The Appraisal Foundation Advisory Council (TAFAC), the Federal Interagency Real Property Appraisal Committee (FIRPAC) of OMB, and the Interagency Land Acquisition Conference with the Department of Justice. A certified general real estate appraiser with the state of Maryland, he holds a bachelor's degree in agricultural economics from Purdue University.

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