Guidance for Approval of Submissions for Real Property Transactions

The acquisition or disposition of real property, by gift, purchase, or sale, involves a certain amount of risk to the University of Colorado. These risks include financial and management risk, ownership liability risk, and reputational risk. Because of these risks, approval of any acquisition is required by the Board of Regents,[1] and additional legislative authorization through the Capital Development Committee (CDC) is required for acquisitions valued at more than $5.0 million, if the source of funds for the acquisition includes student fees.[2] Board of Regents approval is also required for any sale of real property or disposition of real property in the form of a ground lease.[3] The Office of the State Architect, Real Estate Program (REP), also has certain approval authority[4] and state fiscal rule requirements[5] related to real property transactions.

It is important that each campus presents sufficient information in its approval submission so that university leadership and the Board of Regents can make informed decisions about the merits of a proposed acquisition or disposition. This document is intended to provide guidance about the process for and content of approval submissions. These submission processes are not intended to be overly burdensome, and staff from the Office of the Vice President of Budget and Finance within System Administration, including the Assistant Vice President for Budget, Planning and Capital ("the AVP") and the Senior Director of Real Estate Services, shall be available for guidance and assistance at any point in the process.

Each campus shall use its own processes, as established by the Chancellor, to prioritize, pursue, review, and propose real estate acquisitions and dispositions to the Board of Regents. Each campus is responsible for preparing materials for presentation to the Board of Regents and the CDC.

Prior to consideration by the Board of Regents, a campus must notify and/or seek feedback from the following groups:

1. University Counsel must be asked to review any agreements and contracts related to the proposed transaction. While University Counsel's review is typically limited to legal sufficiency, counsel's office may provide additional insight to enhance the review process. University Counsel may recommend the engagement of outside counsel for more complex transactions.

2. The University Treasurer must be informed of the proposed acquisition early in the process, regardless of the source of financing. Use of reserves for the transaction should be reported in the quarterly capital cash report sent to Treasury.

3. If the proposed acquisition is a charitable contribution, University Advancement must be consulted early in the process to ensure the donor understands the guidelines and review process. Generally, any gift or donation of real property is made to the university through the University of Colorado Foundation under its gift acceptance guidelines. If a real property gift is to be used by a campus, then that gift may be made directly to the university. Gifts of real property are subject to these guidelines regardless of how the property is gifted.

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[1] Regent Article 13.A.1
[2] Section 23-1-106 (7)(c)(I)(B) and (7)(c)(II), C.R.S.
[3] Proof of authority is required for all property dispositions. The Board of Regents has stated interest in approving dispositions in the form of ground leases because these transactions typically involve an associated construction project on campus or campus-adjacent property.
[4] Section 24-30-1303 (1)(a), C.R.S.
[5] State Fiscal Rule 5.1.2

Program Plan

A program plan is required for all acquisitions,[6] regardless of whether acquired by purchase or by gift. (See APS 3002/Appendix B for program plan requirements.)

Approval Process and Submission Format

Each campus shall submit documents via email to the AVP for System review and inclusion in upcoming Board of Regent Finance Committee meetings based on the submission dates in the annual request budget calendar published by the AVP pursuant to APS 3002. Submissions are typically due about three weeks before a scheduled Finance Committee meeting.

There is no required format for a proposed real estate transaction approval submission beyond the information described in Appendix B. Each acquisition submission will include a program plan (if applicable), presentation slides, a statement of information for Community, and, if applicable, state submission forms.

After System review and comment, documents will be revised, if applicable, and uploaded to Community by the AVP. If the proposed acquisition or disposition is to initially be presented during an executive session of the Board of Regents Finance Committee, these documents will not be made public. Documents should be uploaded to Community no later than the Friday before a scheduled meeting.

Finance Committee. The Board of Regents Finance Committee reviews all property transaction proposals. A campus should specify whether a proposal should be heard in executive session. The permissible reason for executive session related to real property acquisitions and dispositions under the Colorado Sunshine Law is excerpted below.[7]

> *The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the state public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as a gift in an executive session, only if such executive session is requested by the donor.*

A proposal may be heard in executive session as an information item or as an upcoming action item. The Finance Committee should be informed of any potential acquisition or disposition in advance of any briefing or presentation to the full Board. Unless directed otherwise by the Regents, upcoming action items heard by the Finance Committee will be referred to the full Board for consideration at the next available meeting.

The AVP is responsible for adding agenda items to the committee calendar and coordinating all System reviews of a proposed transaction, including briefings with the Vice President of Budget and Finance and the President. The Vice President and the AVP will brief the Chair and the Vice-Chair of the Board of Regents Finance Committee about property transaction proposals one to two weeks ahead of the committee meeting.

Board of Regents. Following review by the Regents Finance Committee, a property transaction proposal will be scheduled for consideration by the full Board.

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[6] Regent APS 3002 (II)(A)(4)(c)
[7] Section 24-6-402(3)(a)(I), C.R.S.

Following the Board of Regents Finance Committee meeting and ahead of a full Board of Regents meeting, Board staff and the AVP will coordinate to add property items to the meeting calendar and to upload relevant documents. No campus action is required. The Vice President of Budget and Finance will brief the Regents about property transaction proposals ahead of the Board meeting.

Capital Development Committee. The AVP will coordinate the submission and scheduling of legislative review of property acquisitions valued at more than $5.0 million (if the source of funds includes student fees; if the source of funds does not include student fees CDC review is not required). Typically, campus staff are responsible for presenting its request to the CDC.

Office of the State Architect, Real Estate Program (REP). The REP is involved in advising and reporting real estate transactions for state agencies and institutions of higher education, and REP approval is required for any real estate transaction involving state funds (state Capital Construction Fund). [8] The role of the REP in each type of University of Colorado real estate transaction is summarized below. Other university requirements are also listed.

- Acquisition of Real Property
  - Campuses should consult REP prior to initiating an acquisition of real property.
  - Use of the state-contracted real estate brokerage firm is required for all acquisitions, regardless of funding source, with very limited exceptions.
  - Campuses should report acquisitions to REP at the time of purchase using this link.
- Disposition of Real Property
  - REP can offer assistance.
  - A campus must indicate its intended use of the net sales proceeds from the disposition of property in its submission of information to the Office of the Vice President of Budget and Finance pursuant to APS 4005/Permanent Land Fund.
  - Ground leases of university property to outside parties are considered dispositions.

    Campuses should report the dispositions to REP at the time of the acquisition using this link.
- Easements and Rights-of-Way
  - REP approves all easements and rights-of-way transactions, pursuant to contracting approval authority delegated by the State Controller through State Fiscal Rules.
  - Board of Regents and Presidential approval of easements and rights-of-way is explicitly required in statute.[9]
- License Agreements (University as licensee)
  - REP can assist in reviewing draft license agreements to ensure that statutory requirements are met.
  - License agreements do not require approval by the Board of Regents but should be reviewed by university counsel and REP or the appropriate delegate.
    - When using the REP-issued license agreements, approval authority is currently delegated to an individual at each CU campus and the System Office within REP guidelines.
- Leasing of Space[10] (University as tenant)
  - REP approves all leasing transactions where the University is the tenant, pursuant to contracting approval authority delegated by the State Controller through State Fiscal Rules.

[8] Section 24-75-302, C.R.S.
[9] Section 24-82-202, C.R.S.
[10] Entering into any type of lease incurs a financial obligation. This may trigger disclosure filing on the Electronic Market Municipal Access (EMMA) website as a “Material Event Notice”.

    - Leasing of space does not require approval by the Board of Regents. When using the REP-issued lease agreements, this authority is currently delegated to an individual at each CU campus and the System Office within REP guidelines.
- If a campus is considering entering into a new lease as a tenant, it should complete a space request form in consultation with the campus REP delegate.
    - Use of the state-contracted real estate brokerage firm is required for all leasing transactions where the University is a tenant, with very limited exceptions, and the firm cannot be engaged until the space request form is completed.
- Campuses should report periodically about leases and interagency leases using a REP-provided form. For assistance, please contact the Senior Director of Real Estate Services. In some instances, the Senior Director of Real Estate Services may report to REP on behalf of a campus.

Additional information and guidance from REP can be found at: https://osa.colorado.gov/real-estate/.

Public/Private Partnerships. From time to time a campus may consider engaging a private partner to develop or operate a project for the benefit of the University or for another agreed-upon-use through a public/private partnership (P3). Such an agreement may result in a ground lease of university property to a private developer, which ground lease triggers automatic Regent review.

Additionally, the Vice President, the AVP, and the University Treasurer must be informed by the campus of potential P3 transactions early in the evaluation phase in order to discuss the source of funding and financing for the arrangement.

Acquisitions by Affiliates

There are several university-affiliated entities that may be able to facilitate acquisitions when a required purchase commitment and timing for the university approval process cannot be aligned. The University of Colorado Property Corporation (CUPCO) was formed to receive, hold, invest, maintain, operate and administer real property and personal property, borrow money and make expenditures to or for the benefit of the university. CUPCO has access to a credit facility to permit timely acquisition of real estate critical to the university's mission. CU Boulder and UCCS also have affiliates that may be able to offer similar facilitation. Use of an affiliate does not, however, eliminate the approval requirements included in this guidance and there is a risk that university approval of an acquisition from the affiliate will be denied.