

Legislative Review and Approval of the Purchase, Sale, and Transfer of Real Property by State Agencies

June 17, 2003

**Report to the Executive Appropriations Committee
Of the Utah State Legislature**

**Prepared by
The Office of the Legislative Fiscal Analyst**

**Steven Allred, Lead Analyst
Mark Bleazard
Kevin Walthers**

Executive Summary

Utah law gives all state agencies authority to acquire and dispose of real property. For most agencies, this authority must be handled through the Division of Facilities and Construction Management (DFCM). Most property purchases fall under the definition of “capital development” and must be submitted to the State Building Board which in turn submits its prioritized capital development recommendations to the Legislature.

However, an exception is made for some agencies to hold title to real property and dispose or exchange it under their own control. These include:

- The Department of Transportation
- The Department of Natural Resources
- The Utah National Guard (State Armory Board)
- Any institution administered by the State Board of Education
- Any Higher Education institution (Board of Regents)
- The School and Institutional Trust Lands Administration

This report examines applicable statutes and practices of these agencies relative to legislative approval of real property transactions.

In House Bill 292, enacted in the 2000 General Session, the Legislature stated that no prior legislative approval is needed for projects that involve no state funds in purchase, maintenance, or future improvements. The Legislature also exempted acquisitions costing less than \$250,000.

The Legislature recently took steps to tighten its oversight over real property acquisitions made by the State Armory Board. House Bill 15 of the 2003 General Session requires Legislative Management Committee approval of the Armory Board’s purchases and sales of real property.

This report recommends that:

1. The Legislature should tighten the definition of “non-state funds” in statutes exempting certain capital developments from prior legislative approval. While the Legislature intended this to mean donated funds, sometimes in budgeting terms restricted funds are considered non-state funds.
2. The Legislature should amend UCA 63A-5-215 so that funds received by DFCM from the sale of real property are not considered to be automatically appropriated to the state building program but rather are subject to legislative appropriation;
3. The Legislature should consider statutory revisions to establish some minimum standards for real property dispositions by agencies that dispose of real property through DFCM.

Other than DFCM, what state agencies can acquire / sell / exchange real property?

Under current statute, “all state agencies may acquire land by gift, devise, bequest, exchange, compensation for public resource value loss, or in satisfaction of a debt [purchase is not mentioned] and are authorized to sell, lease, or otherwise dispose of land no longer needed for public purposes, unless otherwise provided by law” (UCA 65A-4-1). Proceeds from dispositions of land go to the agency unless the governor, Legislature, or statute mandate an alternative use.

For most state agencies, this authority to acquire and dispose of real property is to be handled through the Division of Facilities Construction and Management (DFCM). The director of DFCM is charged with acquiring and holding title to, in the name of the division, all real property owned by state agencies. However, an exception is made for some agencies to hold title to real property and maintain it under their control (UCA 63A-5-204). These include:

- The Department of Transportation
- The Department of Natural Resources
- The Utah National Guard (State Armory Board)
- Any institution administered by the State Board of Education
- Any Higher Education institution (Board of Regents)
- The School and Institutional Trust Lands Administration

The following sections will examine applicable statutes and practices of state agencies that conduct real property transactions.

Division of Facilities Construction and Management

House Bill 292, enacted in the 2000 General Session, clarified the role of DFCM and the Legislature regarding capital developments. It expanded the definition of “capital development” to include “purchase of real property where an appropriation is requested to fund the purchase.” It is possible that an agency could buy property without requesting an appropriation, and therefore would not need to follow the capital development process, but it is not common. For example, an agency may have sufficient funding to buy inexpensive pieces of real property. There have also been instances when agencies such as the Tax Commission or DCED have taken title to real property through foreclosure.

The Legislature oversees most capital developments

In most cases, real property purchases fall under the definition of capital development. Therefore, most real property acquisitions must be submitted to the State Building Board, which is staffed by DFCM. The State Building Board in turn submits its prioritized capital development recommendations to the Legislature on behalf of all state agencies.

Exceptions to legislative oversight

All capital developments handled by DFCM require prior legislative approval, with the following exceptions (see UCA 63A-5-104):

1. Developments in which it is demonstrated that no state funds will be used for construction, operation and maintenance, or future capital improvements.
2. Renovation, remodeling, or retrofitting projects in an existing facility with non-state funds.
3. Facilities built with non-state funds and owned by non-state entities within research parks at the University of Utah or Utah State University.
4. Facilities built at This is the Place State Park with funds of the This is the Place Foundation.
5. Capital development projects built for the Department of Transportation as a result of an exchange of real property for highway purposes. However, UDOT must notify the president of the Senate, the speaker of the House and the co-chairs of the Capital Facilities and Administrative Services subcommittee when it approves such an exchange.
6. Another exception was put into H.B. 292 to increase DFCM's flexibility. No legislative approval is required for acquisitions that cost less than \$250,000. DFCM staff can recall only three purchases made under this exception since it became law:

<u>Description</u>	<u># Acres</u>	<u>Cost</u>	<u>Note</u>
Ogden liquor store	0.2	\$1	Store was financed and built by the city with a long-term lease to the state. The lease was set up to amortize the city's costs. At the end of lease term, the state had the option to purchase it for one dollar.
Murray liquor store	0.2	\$1	Store was financed and built by the city with a long-term lease to the state. The lease was set up to amortize the city's costs. At the end of lease term, the state had the option to purchase it for one dollar.
Land adjacent to courthouse in Cedar City	0.3	\$93,000	Courts provided the funding. Part of a request that Courts submitted through the capital development process to facilitate a future expansion of the Cedar City court.

DFCM sold one piece of real property in the last two fiscal years. The Tri-City Golf Course was sold for \$450,000 to the cities that held a long-term lease on the property. The number of acres sold was 95.

In granting state agencies and institutions the ability to develop non-state funded facilities without prior legislative approval (see exception #1 above), the Legislature's intent was to provide increased flexibility to work with donors. However, an area of concern may exist in the designation of "non-state" funds. During the 2002 Interim an agency came to the Building Board seeking approval to use the provisions of H.B. 292 to construct a facility using restricted funds. For budgeting purposes restricted funds are not considered state funds, but the interplay of general and restricted funds is often a concern to the Legislature. The Analyst recommends amending the statute to tighten the definition of "non-state funds" in this instance to prohibit use of restricted funds. If an agency operates on a mixture of general and restricted funds, it seems appropriate that restricted funds be considered "state funds" since some part of that operation is funded by general tax obligations.

Recommendation:
Tighten the definition of "non-state funds"

No statute requires legislative oversight of real property dispositions or donations to local governments

No statutory requirement exists requiring legislative approval of dispositions of real property. Neither is there statute governing whether agencies can donate land to local governments.

However, there are provisions governing the use of funds received from land sales. UCA 65A-4-1 states that proceeds from land sales shall go to the state agency holding the land unless the governor or Legislature orders it to be deposited elsewhere, or the use of money is specified elsewhere in law. There are at least two other uses specified in law:

1. UCA 63A-5-215 orders that money received by DFCM from the sale or other disposition of property *becomes a part of the funds provided by law for carrying out the building program of the state, and are appropriated for that purpose.*

In prior sales, the Legislature has been aware of the money and has appropriated it for some purpose. To avoid confusion, the Analyst recommends the Legislature amend the current statutory language which says that the funds automatically go to the state building program and are automatically appropriated.

Recommendation:
Amend statute so sales proceeds are not automatically appropriated

2. Another statute in which the disposition of proceeds is specified is UCA 63A-5-220, which only applies to property at the Developmental Center in American Fork. It states that money received from land sales associated with the Developmental Center be deposited in the Trust Fund for People with Disabilities.

Recommendation:
Consider statute to incorporate minimum standards for real property dispositions

The Analyst recommends the Legislature consider statutory revisions to establish some minimum standards for real property dispositions by agencies that dispose of real property through DFCM. The Analyst recognizes the value of maintaining some flexibility for the agencies to act in the state's best interest, but some minimum standards that would not overly impede their flexibility could include:

- Obtaining an appraisal and selling property within a certain percentage of the appraised value
- Reasonable advertising of sales
- Notifying certain executive branch entities or legislators (leadership, committee chairs, or representatives of affected districts) of all dispositions over a certain appraised value
- Requiring Legislative Management Committee approval of dispositions over a certain appraised value
- Restricting donated lands from being resold without providing compensation back to the state

No statute governs land exchanges between state agencies

There is no statute governing the exchange of real property from one state agency to another. Exchanges between state agencies are generally negotiated between the agencies. In most (if not all) cases, the Legislature is aware of such projects. For example, DFCM recently sold some property to the Utah Department of Transportation for the Bangerter Highway project that bisected a large parcel of land DFCM has at the State Prison.

Department of Transportation

The Department of Transportation (UDOT) may acquire any real property needed for temporary, present, or reasonable future state transportation purposes (UCA 72-5-103). Acquisitions can be done through gift, agreement, exchange, purchase, condemnation, or otherwise. These transactions can be made without prior approval from the Legislature or DFCM. However, in order to make capital developments on a piece of real property (for example, a maintenance facility), they must go through the Building Board’s capital development process.

UDOT receives regular oversight of its real property transactions from three groups: The Transportation Commission, the State Private Property Ombudsman, and the Federal Highway Administration.

The Transportation Commission consists of seven members appointed by the governor with the consent of the Senate. The Commission sets priorities and funding levels of all transportation projects, and determines additions or deletions to state highways. In acquiring real property for transportation corridors, the commission authorizes the use of monies from the Transportation Corridor Preservation Revolving Loan Fund for state, county, and municipal corridors. Further, the commission authorizes settlement agreements in condemnation cases where the settlement exceeds the department’s original appraisal by over \$1,000,000.

The Private Property Ombudsman was established by the 1997 Legislature to address citizen concerns about the way government actions can impact the use and value of private property. Each state agency is required by law to adopt guidelines to assist them in actions that have constitutional “taking” implications. The Private Property Ombudsman can investigate and recommend solutions if a government action may violate private property rights. Since nearly all of the real property acquired by UDOT is acquired by condemnation or the threat of condemnation, the Ombudsman is closely involved with the transactions. The Ombudsman gives assistance to agencies and private property owners. This assistance includes information, mediation, or arbitration.

The Federal Highway Administration closely monitors property acquisitions by the department to ensure they comply with federal regulations if federal funds are involved. To ensure compliance with these regulations, UDOT’s administrative rule R933-1-1 says: “The State of Utah incorporates by reference 49 CFR 24 as amended in the Federal Register, March 2, 1989, as its administrative rules on the acquisition of rights of way for federal-aid projects.” 49 CFR 24 outlines the steps agencies must follow when acquiring property, whether by purchase, lease, easement or gift.

Instances that require legislative involvement

Less frequent but equally important oversight is provided by the Legislature through the Transportation committees, the Legislative Management Committee, and the body as a whole. If a settlement to resolve a condemnation case exceeds \$2,000,000, it must be approved by the Legislative Management Committee after approval by the Transportation Commission. As noted earlier, the department must also notify the president of the Senate, the speaker of the House of Representatives, and the co-chairs of the Capital Facilities and Administrative Services subcommittee when it approves an exchange of real property involving a capital development project.

House Bill 13 impacted land acquisitions for transportation corridors

House Bill 13, enacted in the 2003 General Session, changed the number of years a piece of real property may be acquired in advance of actual highway construction from twenty to thirty years. It declared that the acquisition of private property rights for preservation of transportation corridors should be done on a volunteer basis and not by the use of eminent domain powers. If a piece of real property acquired through condemnation or threat of condemnation is later declared to be surplus, the agency must give first right of refusal to the original owner or the owner’s heirs to buy back the property.

Property acquired by eminent domain

UDOT is unique among state agencies in that the vast majority of the real property it acquires is through the right of eminent domain. Under Utah law, there are a variety of purposes for which property can be acquired by eminent domain. The state, through legislation, has delegated its condemnation powers to various agencies, political subdivisions, and even private companies and individuals. These include UDOT, cities, counties, special districts, redevelopment agencies, and school districts. Private corporations such as public utilities, canal companies and mining and lumber companies and railroads can use the power of eminent domain. The state’s eminent domain laws can be found in UCA 78-34.

Other aspects of UDOT’s real property acquisitions:

- Counties and municipalities may contribute land to the department for state transportation purposes. This land may then be exchanged for or used in the purchase of other land to be used for transportation.
- If the department is to acquire a portion of a private owner’s real property, and the remainder of the property is left with little or no value, the department may acquire the whole of the property and may sell or exchange the unneeded portion.
- The department may acquire real property in advance of highway construction in order to save on acquisition costs. This land may be leased or rented until such time as construction begins.
- If the department wishes to condemn the same piece of property as another agency wishes to condemn for a different purpose, the department may (with the consent of the other agency) condemn a separate piece of property to be exchanged with the agency for the property to be used for state transportation purposes.
- The department may use its expertise to assist in condemning real property for other agencies. For example, under contract with the Division of Parks and Recreation, UDOT did most of the work in condemning Antelope Island and Jordan River parkways for establishment of state parks.

As the number of transactions conducted by UDOT is large, the following table summarizes their actions over the past two fiscal years. Detail on individual transactions can be provided upon request.

Right of Way Acquisitions				
	<u>Total \$</u>	<u>Number of Properties</u>	<u>Acquired Via Negotiation</u>	<u>Acquired Via Eminent Domain</u>
FY 2002	\$35,474,300	391	353	38
FY 2003	\$30,351,600	679	609	70
			90%	10%
Surplus Property Sales				
FY 2002	\$3,611,500	37		
FY 2003	\$2,373,300	30		

**Department of
Natural Resources**

Although the entire Department of Natural Resources has authority to hold real property and conduct real property transactions without receiving prior DFCM and legislative approval, only three divisions are involved in such dealings: The Division of Forestry, Fire and State Lands; the Division of Wildlife Resources; and the Division of Parks and Recreation.

The **Division of Forestry, Fire and State Lands** has the obligation of managing the state's sovereign lands (lands lying below the ordinary high water mark of navigable bodies of water at the date of statehood and owned by the state by virtue of its sovereignty) and can dispose of such lands as it sees fit, but disposal is not common. Since sovereign lands are limited by definition, the division cannot acquire new sovereign lands except by legal action over certain disputed lands. The division could, however, acquire lands other than sovereign lands. This also is uncommon. In the past two fiscal years the division has acquired some conservation easements with federal funding, but has not acquired, disposed of, or exchanged real property with state funds.

The **Division of Wildlife Resources** owns lands for wildlife habitat purposes. UCA 23-21-1.5 limits the division from acquiring any real property in private ownership unless it first publishes a notice in a local newspaper and obtains the approval of the governor. The governor is required to submit notification to the county executive, the legislators representing the affected districts, and the School and Institutional Trust Lands Administration. The governor must also invite those notified to submit comments on the proposed acquisition. After considering comments, the governor can approve the acquisition in whole or in part, or disapprove.

In FY 2002 the Legislature appropriated \$1 million in one-time funds for the division to acquire conservation easements on former school trust lands now held in private ownership. The division has since published administrative rules for such acquisitions. The division has received legislative comment on these acquisitions to ensure it follows legislative intent.

The following transactions have taken place in the last two fiscal years:

Acquisitions			
<u>Description</u>	<u># Acres</u>	<u>Cost</u>	<u>Note</u>
Lake Canyon	4,168.0	\$2,500,000	Duchesne County
East Canyon/Red Rock	750.0	\$360,000	Cache County
Gordon Creek	55.0	\$8,400	Carbon County
East Canyon/Red Rock	318.5	\$125,000	Morgan County
Prairie Dog Habitat	181.0	\$240,000	Iron County
East Canyon/Red Rock	931.1	\$375,000	Summit County
Tortoise Habitat	579.1	\$5,582,500	Wash. Co. SITLA lands w/federal funds
Tortoise Habitat	254.3	\$2,732,000	Wash. Co. SITLA lands w/federal funds
Heber Face/Wallsburg	286.0	\$643,600	Wasatch County

Disposals			
Deer Pens	117.0	\$1,620,000	Cache County
Indian Canyon	950.9	\$30,600	Duchese County
Hilltop	1,074.0	\$128,800	Sanpete County
Fountain Green	4.2	Exchange	Sanpete County

The **Division of Parks and Recreation** was given the right to buy and sell land under UCA 63-11-17. The division has its own real property manager and does not typically work through DFCM in strictly land issues. All transactions are subject to the approval of the department executive director and the governor. Statute makes it clear that the credit of the state may not be pledged without the consent of the Legislature.

Before acquiring any real property, the division must notify the county legislative body of its intent. If the county legislative body requests a hearing within ten days, the Parks Board must hold a public hearing in the county. The division may accept land donations subject to approval of the Parks Board, the department executive director, and the governor.

The following transactions have occurred in the last two fiscal years:

Acquisitions			
<u>Description</u>	<u># Acres</u>	<u>Cost</u>	<u>Note</u>
Territorial Statehouse	0.5	\$14,100	Purchased from Fillmore City
Snow Canyon	59.4	\$319,400	Reimbursed by U.S. Fish & Wildlife Serv
Snow Canyon	90.0	\$2,880,000	Reimbursed by U.S. Fish & Wildlife Serv
Snow Canyon	39.7	\$2,160,000	Reimbursed by U.S. Fish & Wildlife Serv
Snow Canyon	39.7	\$738,700	Reimbursed by U.S. Fish & Wildlife Serv

Disposals			
Jordan River	9.5	\$183,600	
Jordan River	0.2	\$23,000	

Transfers			
Ft. Buenaventura	48.9		To Weber County
Ft. Buenaventura	39.5		21st Street Pond to UDOT
Jordan River	109.0		To Salt Lake City - In Process
Minersville	207.3		To Beaver County - In Process

The legislature has delegated the authority to acquire land by eminent domain to the division. Last time this authority was used was in the late 1970s to acquire Antelope Island and the Jordan River parkway.

Utah National Guard

The Utah National Guard, through the State Armory Board, may take and hold by purchase, gift, devise, grant, or bequest real property required for its use (UCA 39-2-1). If it receives unsuitable real property by gift, devise or bequest, it may convert it into other property or money. It can also borrow money to build arsenals and armories upon the sole credit of the real property it owns.

The State Armory Board consists of the governor, the chair of the State Building Board, and the adjutant general. It supervises and controls armories, arsenals, and real property acquired for military purposes of the state. For purposes of providing armories and arsenals it may lease buildings, erect buildings on lands to which it has acquired legal title, and spend military funds to acquire legal title to lands.

For several years the Legislature’s Government Operations Committee examined the role of the State Armory Board in buying and selling property. Statute dating back to the 1940s allowed the Armory Board to purchase any premises under lease if such purchase was deemed to be “in the state’s best interest” (UCA 39-2-2). However, during the 2003 General Session the Legislature tightened its oversight of these land purchases, as a purchase agreement negotiated six years ago resulted in a judgment against the state. House Bill 15 placed restrictions on the Armory Board to require Legislative Management Committee approval of purchases and sales of property. Proceeds from the sale of property are applied toward the construction of future armories.

No transactions have taken place in the last two fiscal years. The following table shows armories that have sold (with associated land) in the past five years:

<u>Description</u>	<u># Acres</u>	<u>Disposals</u>	
		<u>Received</u>	<u>Note</u>
Smithfield Armory		\$190,900	Sold in 1999 - Land and Building
Sunnyside Armory		\$8,100,000	Sold in 1999 - Land and Building
Provo Armory		\$325,000	Sold in 2000 - Land and Building
Murray Armory		\$748,400	Sold in 2000 - Land and Building

Institutions under the State Board of Education

Other than the language in UCA 63A-5-204 stating that public education institutions may hold title to real property (rather than DFCM holding the title), no further exceptions exist in statute to govern the way public education institutions acquire, dispose of, or exchange property. Likewise, no administrative rules have been promulgated on the subject. However, the institutions do first seek Board of Education approval for all real estate transactions they conduct.

Neither the State Office of Education nor the Schools for the Deaf and Blind have had any real property transactions in the past two fiscal years. The State Office of Rehabilitation recently completed the sale of the Ogden Center for the Blind and Visually Impaired. Total sale price was \$35,000 and proceeds will be used to purchase Assistive Technology for blind and visually impaired clients in Weber County. The sale of this property was handled by DFCM.

The Utah Enabling Act established trust lands for the benefit of these institutions. More information on trust lands is provided below in the section related to the School and Institutional Trust Lands Administration. In 2000, the Schools for the Deaf and Blind negotiated a deal with the State Office of Education to exchange trust lands of equal value so that USDB could construct a facility on lands formerly held for the benefit of common schools. Each parcel had a value of approximately \$50,000.

Utah System of Higher Education Institutions

Title 53B outlines the broad responsibilities of the State Board of Regents in administering the facilities, grounds, buildings and equipment at institutions under its jurisdiction. The board is required to keep an up-to-date master plan to include finding financing for future projects to keep up with growth and determining the capital budget needs of each institution.

The board is given explicit authority to acquire land and facilities in UCA 53B-20-103. However, if the receiving institution wishes to use any state funds for the acquisition costs or future operations and maintenance costs, it must receive approval through the Building Board process. For example, the Utah State University extension in Brigham City recently was donated the land and building of a former K-Mart. Since USU wants to reserve the right to request state funding for O&M, it is submitting the acquisition to the Building Board for approval.

Although no statute clearly states that the board may sell or exchange its lands without DFCM approval, this is an established practice that has been accepted for decades. The board has established administrative rules based on Title 53B outlining the procedures for disposal or exchange of land.

The system of higher education is unique from other state agencies in that, for tax purposes, it receives many pieces of property by donation from individuals and groups. Each donation has a different set of conditions placed upon it by the donor. Managing all of these individual donations is challenging, but statute does allow each institution to convert donated property into other property or into money (UCA 53B-20-105).

*Options when using
donated funds*

State law gives higher education institutions the option of choosing whether or not to use DFCM for project management if:

1. A donor donates the land and commits to build a building on it (no state funds involved);
2. The institution agrees not to use state funds for operations and maintenance costs; and,
3. The institution agrees that no state funds will be used for future capital improvement costs (UCA 53B-20-103)

This policy was enacted in response to USHE requests for added flexibility. The primary issue involved a donor who wanted to improve a baseball field and erect a press box/concession stand on a college campus. The six month delay in seeking legislative approval for the facility contributed to the ultimate loss of the donation. At that point, the Legislature determined that facilities for non-state or auxiliary purposes could be approved by the Building Board without unduly exposing the state to additional risk.

The following higher education transactions have taken place in the past two fiscal years:

Acquisitions			
<u>Description</u>	<u># Acres</u>	<u>Cost</u>	<u>Note</u>
Ogden/Weber ATC	2.4	\$500,000	Purchased two residential parcels contiguous to campus consisting of three homes and one free-standing garage
Dixie State College		\$120,000	Purchased 8,712 square foot apartment complex from Dixie State College Found.
Utah State University			Acceptance of donated property from Tri-Park
Salt Lake Cmty Coll		\$550,000	Building at 4306 S. State, to be traded to the owner of two blgs near S. City Campus
Utah State University	550.0	\$1,100,000	Replace Ag Experiment Station farmland
Utah Valley St Coll	0.4	\$169,000	Lot and home contiguous to campus
Weber State Univ	0.4		Parcel adjacent to Dee Events Center
Disposals			
University of Utah			Approval to sell the following properties: a. Bountiful residence donated b. Residence on 1300 East donated c. UUHN building on 300 South, SLC d. Property in Strawberry Estates donated e. Millford lots and residence donated f. Two lots in Vista Valley Estates, donated
	10.0		
Salt Lake Cmty Coll	10.0	\$14,000	Sale of parcel located in Emigration Canyon
Utah State University	10.0	\$105,000	Sold to City of Nibley for a public park
University of Utah	200.0		Five 40-acre lots near Reno, NV donated
Weber State Univ	2.2	\$13,000	Sale of donated land classified as non-compliant for building purposes due to seismic concerns
Exchanges			
Utah Valley St Coll	1.1		Exchanged residential parcel for similar parcel nearby
Utah State Univer	1.5		Exchanged with City of Logan to facilitate access to culinary water reservoir

School and Institutional Trust Lands Administration

SITLA was established under UCA 53C-1-201 as a quasi-governmental independent state agency to manage all school and institutional trust lands granted to the state under terms of the Enabling Act. SITLA manages the lands to maximize revenues, and may sell land if doing so is deemed to be in the best interest of the beneficiaries. Revenues from land sales go directly to the nonexpendable trust fund of the land’s designated beneficiary.

The Legislature has given SITLA authority to deal with trust lands independently without prior legislative approval. The director and the Board of Trustees establish criteria for the sale, exchange, lease, or other disposition of trust lands. The only restrictions put on the agency by legislation include:

- Lands may not be sold for less than fair market value
- Decisions whether to hold or sell land must be made with the best interest of the beneficiary in mind
- Proposed sales, leases or exchanges must be reasonably advertised

- Any tract of land may be subdivided and sold, leased or exchanged
- Sale conditions must be in accordance with accepted mortgage and real estate practices
- If a buyer defaults on payments, the agency may pursue any remedy available under contract of sale, including forfeiture, at which point the forfeited lands may be resold (see UCA 53C-4-102)

The Legislature oversees SITLA’s operations through the annual appropriations process. Revenues for SITLA’s operations come from trust land activities (other than sales) and must be appropriated to the agency.

At the time of statehood, Congress designated twelve beneficiaries of Utah trust lands. The following chart shows each beneficiary and the number of acres sold since statehood.

TRUST LAND HOLDINGS

Beneficiary	Original Grant	Sold Since Statehood	Current Holding
Public Schools	5,855,217	2,522,636	3,332,581
Reservoir Fund	500,000	454,186	45,814
Utah State University	200,000	171,881	28,119
University of Utah	156,080	139,518	16,562
School of Mines	100,000	92,491	7,509
Miners Hospital	100,000	92,979	7,021
Normal School	100,000	93,593	6,407
School for Deaf	100,000	94,342	5,658
Public Buildings	64,000	60,444	3,556
Utah State Hospital	100,000	99,575	425
School for Blind	100,000	99,344	656
Youth Development Center	100,000	99,981	19
Total	7,475,297	4,020,970	3,454,327

In the last two fiscal years (FY02 – 03), SITLA has carried out 371 land sales, disposing of 23,833 acres and raising \$26.8 million for trust beneficiaries. There were no land purchases in this timeframe.

Summary and Conclusions

Various state agencies have authority to acquire and dispose of real property. Over the years statutes governing the agencies’ acquisition and development of real property have evolved to the point that the Legislature has strong oversight over real property acquisitions. A recent example is the passage of House Bill 15 in the 2003 General Session requiring the Armory Board to obtain Legislative Management Committee approval of purchases and sales of property. Most state acquisitions of real property must receive prior legislative approval, and there are tightly established exceptions to the requirement for prior legislative approval.

However, in the area of real property dispositions—including donations and exchanges—the Legislature has chosen not to limit agencies’ flexibility by imposing many oversight requirements.

The Analyst makes the following recommendations:

1. The Legislature should tighten the definition of “non-state funds” to prohibit use of restricted funds in real property acquisitions exempted from prior legislative approval. If an agency operates on a mixture of general and restricted funds, it seems appropriate that restricted funds be considered “state funds” since some part of that operation is funded by general tax obligations.
2. The Legislature should amend UCA 63A-5-215 so that funds received by DFCM from the sale of real property are not considered to be automatically appropriated to the state building program but rather are subject to legislative appropriation;
3. The Legislature should consider statutory revisions to establish minimum standards for real property dispositions by agencies that dispose of real property through DFCM. The Analyst recognizes the value of maintaining some flexibility for the agencies to act in the state’s best interest, but some minimum standards that would not overly impede their flexibility could include:
 - Obtaining an appraisal and selling property within a certain percentage of the appraised value
 - Reasonable advertising of sales
 - Notifying certain executive branch entities or legislators (leadership, committee chairs, or representatives of affected districts) of all dispositions over a certain appraised value
 - Requiring Legislative Management Committee approval of dispositions over a certain appraised value
 - Restricting donated lands from being resold without providing compensation back to the state

APPENDIX: Facility and Real Property Oversight – State of Utah

Central Oversight

65A-4-1(1) All state agencies may acquire land by gift, devise, bequest, exchange or in satisfaction of a debt (purchase is not mentioned). Agencies may also sell, lease, or otherwise dispose of land unless otherwise provided by law.

63A-5-104(2) - The State Building Board on behalf of all state agencies and institutions, must submit its Capital Development recommendations and priorities to the Legislature for approval and prioritization.

63A-5-104(3)(a) Capital development projects may not be constructed on state property without prior legislative approval unless:

- No state funds will be used for construction, operation and maintenance, or future improvements
- No state funds are used for renovations
- No state funds are used by non-state entities university research parks
- Facilities are built at This is the Place Heritage Park with foundation funds
- Projects are built for the Department of Transportation as a result of a real property exchange. However, certain legislators must be notified.

63A-5-204(2)(b) – Legislative approval is not required for acquisitions by DFCM that cost less than \$250,000.

63A-5-206(2)(a) - The director of the Division of Facilities Construction and Management (DFCM), which is staff to the Building board, must recommend the need for and exercise direct supervision over the design and construction of all new facilities of state agencies and institutions if the total project cost is in excess of \$100,000.

63A-5-204(2)(a)(iv) The director of DFCM must acquire, as authorized through appropriation or other legislation, and hold title to, all real property, buildings, fixtures, or appurtenances owned by the state or any state agency except those specifically exempted in 63A-5-204(3)(c), (6) and (8).

63A-5-103(1)(d) - The State Building Board should recommend any changes in the law that are necessary to insure an effective, well coordinated building plan for all state agencies and institutions.

63A-5-204(2)(a)(ii) - DFCM to supervise and control allocation of space in departments, agencies, and institutions except as provided by law.

63A-5-215 - Proceeds from the sale of agency and institution property are appropriated to the state building program and should, to the extent practicable, be expended for the construction of buildings or in the performance of other work for the benefit of the agency or institution.

Exceptions

63A-5-204(3)(c), (6) and (8) – The following agencies are exempt from DFCM oversight:

- The State Capitol Preservation Board
- Institutions of higher education
- Office of Trust Administrator
- Department of Transportation
- Division of Forestry, Fire and State Lands
- Department of Natural Resources
- Utah National Guard
- Institution administered by the State Board of Education
- School and Institutional Trust Lands Administration

63A-5-204(3)(e) Other than the Capitol Preservation Board, agencies exempt from DFCM oversight must still report their compliance to facility maintenance standards annually.

11-17-3(1) - **Universities** can finance or acquire by construction or purchase and issue revenue bonds on behalf of entities for industrial development purposes – i.e., research and industrial parks.

53B-6-101 – The **Board of Regents** must establish and maintain an up-to-date master plan to include projects necessary to meet future growth.

53B-20-103(2) and (3) The **Board of Regents** may acquire land and facilities by purchase or donation, and may carry out construction projects on behalf of an institution of higher learning. The Board may opt whether to use DFCM for project management if land is donated and no state funds will be used for O&M or future improvements.

53B-21-101(1) - **State Board of Regents** can issue Revenue Bonds for facilities if bonds are to be repaid from sources other than legislative appropriations, but must have legislative authorization.

53B-13-103(5) - **State Board of Regents** may acquire, hold, or dispose of real and personal property.

72-5-103 - **Department of Transportation** (UDOT) may acquire any real property needed for temporary, present, or future transportation purpose.

72-5-109 – Municipalities may contribute real or personal property to **UDOT** for state transportation purposes.

72-5-111 – **UDOT** may lease, sell, exchange or otherwise dispose of surplus real property no longer determined to be necessary for transportation purposes.

65A-1-4 - The **Division of Forestry, Fire and State Lands** is the executive authority for management of the state's sovereign lands.

23-21-1.5 - **Division of Wildlife Resources** may acquire real property if it first publishes notices of the proposed acquisition, notifies the governor's office, notifies the county executive, notifies the legislators representing the districts involved, notifies SITLA, and invites public comment on the proposed acquisition.

63-11-17(4)(a) - **Parks and Recreation** may acquire real and personal property in the name of the state with the approval of the director and the governor.

39-2-1 – The **Utah National Guard** may, through the Armory Board, take and hold by purchase, gift, devise, grant or bequest real property required for its use.

39-2-2(3) – The **Armory Board** must receive Legislative Management Committee approval of each sale or purchase of real property before it is legally binding.

63A-5-204 **Public Education institutions** may hold title to real property, buildings, fixtures, and appurtenances under their own control.

63A-5-220 - Proceeds from the sale or lease of properties at the **State Developmental Center** must go into the “Trust Fund for People with Disabilities.”

53C-4-102 The **School and Institutional Trust Lands Administration** has authority to deal with trust lands independent of prior legislative approval. The director and the board of trustees set criteria for best interests of beneficiaries. Criteria for disposition of lands include:

- Lands may not be sold for less than fair market value
- Decisions whether to hold or sell land must be made with the best interest of the beneficiary in mind
- Proposed sales, leases or exchanges must be reasonably advertised
- Any tract of land may be subdivided and sold, leased or exchanged
- Sale conditions must be in accordance with accepted mortgage and real estate practices
- If a buyer defaults on payments, the agency may pursue any remedy available under contract of sale, including forfeiture, at which point the forfeited lands may be resold (see UCA 53C-4-102)