

Early Transfer Authority

What is Early Transfer Authority?

Early Transfer Authority (ETA) allows the federal government to transfer property to non-federal entities before the completion of environmental cleanup as long as safeguards are in place to protect human health and the environment. Congress authorized ETA in the fiscal year 1997 *Department of Defense Authorization Act*, amending Section 120(h) (3) of the *Comprehensive Environmental Response, Compensation and Liability Act* (CERCLA). The Governor of the state in which the property is located [and the Environmental Protection Agency (EPA) Administrator for a National Priorities List (NPL) site] must concur that the property is suitable for early transfer.

Why is ETA a valuable tool for brownfields redevelopment?

ETA provides a mechanism to accelerate cleanup and redevelopment of idle surplus federal property by expediting title transfer of contaminated property. Before Congress enacted ETA, CERCLA §120(h)(3) required the federal government to complete all necessary remedial action before transferring title out of federal ownership. Federal funding for environmental cleanup has often proved difficult to obtain, and budget constraints have forced project funding to be spread out over several years. In the interim, without title to the property, potential new property owners and developers faced significant obstacles in securing redevelopment financing. Some property conveyances took years to execute, and many properties languished with protracted remediation of contaminated areas and piecemeal redevelopment of clean parcels.

Early transfer expedites title transfer of contaminated property. Acquiring fee ownership provides the transferee with control of the entire site and with the necessary collateral to obtain construction loans and long-term financing for redevelopment. ETA also benefits local communities by returning the property more quickly to the local tax base than if the landholding agency retained title until cleanup completion. ETA expedites local planning and zoning control, and it facilitates opportunities for new jobs and tax revenues.

ETA also allows for the privatization of remediation responsibilities. Private developers often have greater incentives and funding sources to complete environmental cleanup more expeditiously than a federal landholding agency. Combining remediation and redevelopment reduces duplication of efforts, takes advantages of cost-saving measures, and enables the cleanup remedy to be designed with the ultimate reuse in mind.

State oversight of the cleanup is often simpler when a non-federal owner conducts the cleanup. Many states already have established third-party voluntary cleanup procedures that can be applied to early transfers. Creation and enforcement of institutional controls is also generally less complicated when a single private entity is involved. Land use controls and related responsibilities can be integrated into the reuse plan and in the chain of title for the property as part of the early transfer negotiations.



How does ETA work?

ETA allows for the deferral of the required CERCLA deed covenant that requires "all remedial action necessary to protect human health and the environment" has been completed prior to property transfer. GSA or the landholding agency may recognize excess property as a candidate for early transfer; however, ETA must be used in conjunction with an existing conveyance authority (i.e., negotiated or public sale or public benefit conveyance).

The federal landholding agency prepares a Covenant Deferral Request (CDR) package to formally request deferral of the CERCLA covenant until completion of cleanup. The Governor (and the EPA Administrator when the property is a NPL site) must determine that the property is suitable for early transfer based on a finding that:

- The intended reuse is consistent with the protection of human health and the environment.
- The deferral of the covenant will not substantially delay any necessary response action on the property.
- The public was given notice and allowed at least 30 days to review and comment on the suitability of the property for early transfer.

The deed or other agreement proposed to govern the transfer contains assurances that:

- 1) Any necessary use restrictions will ensure the protection of human health and the environment;
- 2) Any necessary use restrictions will ensure that required cleanup actions will not be disrupted;
- 3) All necessary response actions will be taken and identify the schedule for investigation and completion of all necessary response actions as approved by the appropriate regulatory agency; and
- 4) That the federal agency responsible for the property will submit a budget request to the Office of Management and Budget (OMB) that adequately addresses schedules for investigation and completion of all necessary response action, subject to Congressional authorizations and appropriations.

Is the Government still liable for the cleanup?

Yes, although ETA allows the Federal Government to shift remediation responsibility to the purchaser, the Federal Government cannot transfer its legal liability for the environmental contamination. If the purchaser is unable to complete the remedial action, the responsible federal agency retains the responsibility for doing so. Financial assurances, including performance bonds and environmental insurance, can assure the federal landholding agency, lenders, state regulatory agencies, and local communities that the new property owner and its cleanup contractor have a technically sound remediation plan and the financial resources to complete it.

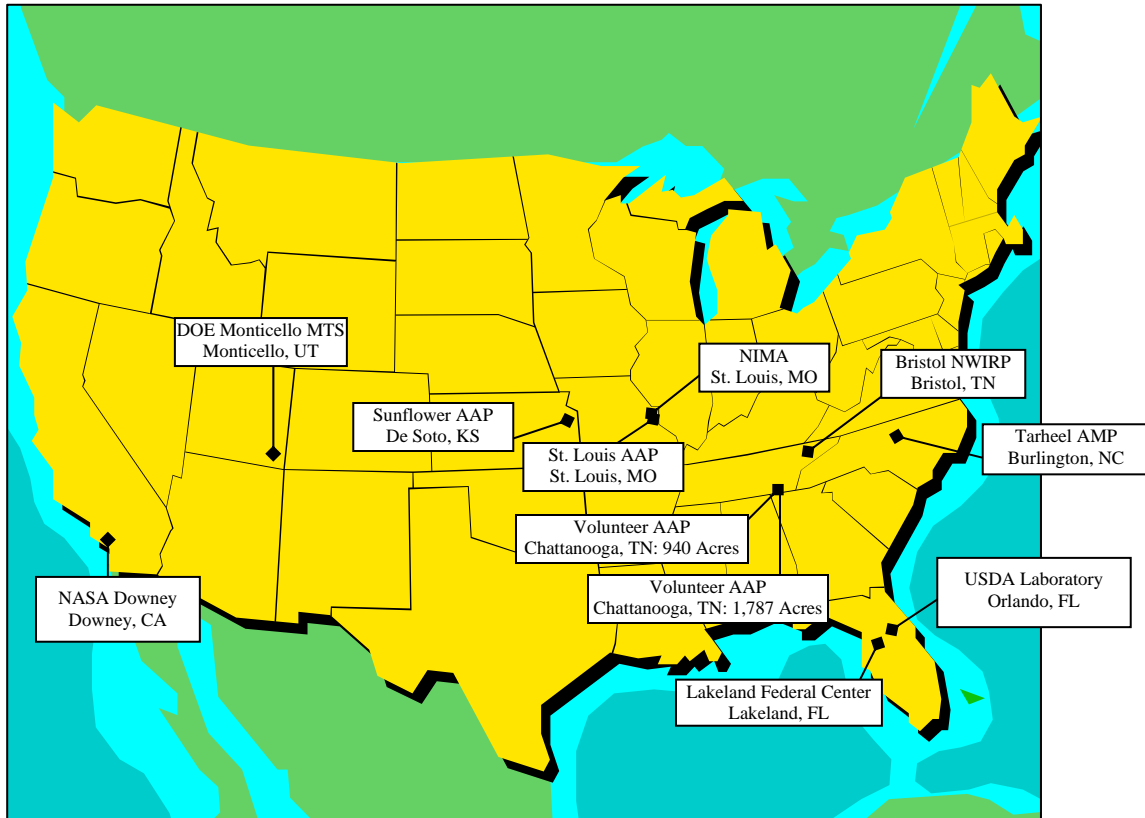
What is the role of the public in early transfer?

ETA requires that the public be given 30 days to review and comment on the suitability of a property for early transfer, in addition to other community outreach efforts that are part of the disposal process. After assembling the draft CDR package, the landholding agency must publish a notice in the local newspaper(s) and make the draft CDR package available to interested stakeholders and the public for comment. Once the Governor (and EPA Administrator if it is a NPL site) concurs with the covenant deferral request, the final CDR is made publicly available.

What is GSA's experience with ETA?

ETA involves balancing real estate factors with environmental conditions and requires close communication with a variety of stakeholders. GSA's expert team of realty specialists, environmental professionals, and attorneys assist landholding agencies through the ETA process. GSA leads negotiations, performs real estate due diligence, and conducts regulatory coordination. Throughout the early transfer process, GSA fosters stakeholder support and works to build consensus for the desired outcome. GSA has successfully facilitated early transfers on behalf of both Department of Defense (DoD) and civilian agencies. The map on the next page reflects GSA's early transfer experience.

Completed GSA Early Transfer Authority Conveyances



To date, GSA has transferred numerous properties using ETA. The map above identifies each of GSA's eleven completed early transfers.

Property Details

- National Aeronautics and Space Administration (NASA) Industrial Plant – Downey, California
- GSA Lakeland Federal Center – Lakeland, Florida
- U.S. Department of Agriculture Laboratory – Orlando, Florida
- Sunflower Army Ammunition Plant (AAP) – De Soto, Kansas
- Air Force National Imagery & Mapping Agency (NIMA) Site – St. Louis, Missouri
- St. Louis Army Ammunition Plant (AAP) – St. Louis, Missouri
- Tarheel Army Missile Plant (AMP) – Burlington, North Carolina
- Bristol Naval Weapons Industrial Reserve Plant (NWIRP) – Bristol, Tennessee
- Volunteer Army Ammunition Plant (AAP) – Chattanooga, Tennessee: 940 Acres
- Volunteer Army Ammunition Plant (AAP) – Chattanooga, Tennessee: 1,787 Acres
- Department of Energy (DOE) Monticello Mill Tailing Site (MTS) – Monticello, Utah

NASA Industrial Plant in Downey, CA:

ETA Facilitated the Downey Landing Redevelopment

NASA's Downey Industrial Plant originally comprised 160 acres in the Los Angeles suburb of Downey, California. NASA relied on the facility for missile research and development, assembly of rockets and missiles, and, most notably, for the design, production, and assembly of materials for the Apollo Space Program. NASA declared the site excess in 1998. It was divided into two parcels, and 64 acres were initially conveyed to the city of Downey. NASA retained the remaining 96 acres. Due to trichloroethylene (TCE) and perchloroethylene (PCE) soil and groundwater contamination, NASA could not certify that "all remedial action necessary" had been taken.

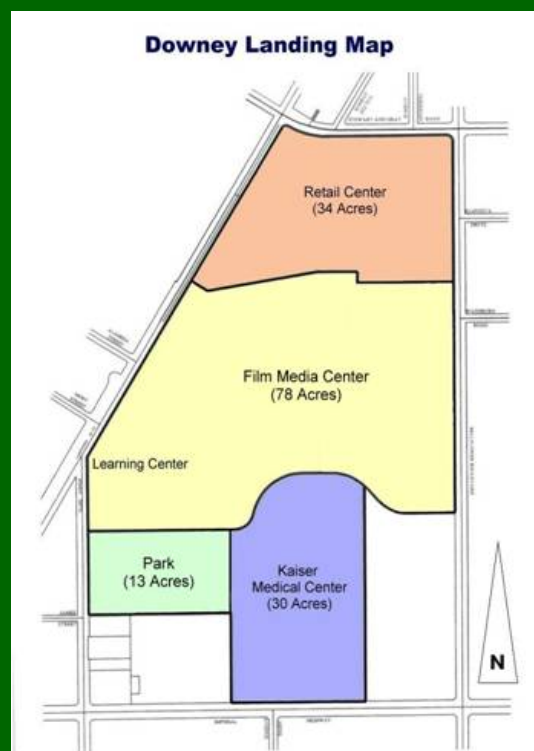
To accelerate title transfer, remediation, and redevelopment, GSA coordinated a series of meetings with stakeholders (NASA, the City of Downey, and the California Regional Water Quality Control Board). Environmental remediation agreements were developed in coordination with the California Regional Water Quality Control Board. The purchaser also acquired environmental insurance to assure NASA and the state that remediation would be completed.

The Governor of California concurred that the NASA Industrial Plant was suitable for early transfer in September 2003. GSA successfully conveyed the property to the City of Downey in December 2003.

By acquiring title to the entire property, the city and its preferred developer structured site redevelopment in tandem with remediation. Mixed-use redevelopment of the property brought welcome economic growth to the community via the new Downey Landing. The project draws its name from the site's history and includes the 78-acre Downey Studios film production center, the 30-acre Kaiser Downey Medical Center with a major hospital and a medical office complex, and a commercial shopping center. The Columbia Memorial Space Learning Center and a public park utilize the remaining acreage at Downey Landing.



Aerial view of what is now called Downey Landing, looking east.



Mixed-use development brought welcome economic growth to the local community.

Volunteer Army Ammunition Plant in Chattanooga, TN: Two Early Transfers Created the Enterprise South Industrial Park



The Volunteer Army Ammunition Plant once covered 6,300 acres in Chattanooga, Tennessee. Formerly the world's largest trinitrotoluene (TNT) manufacturer, the Army and GSA faced a number of environmental challenges in divesting the property from federal ownership. GSA developed a comprehensive reuse plan in partnership with the City of Chattanooga and Hamilton County. This reuse plan reflected the property's environmental conditions and was overlaid with GSA's real property conveyance authorities.

The community's reuse plan was completed in 1999. GSA, the Army, and the City and County identified 940 acres as "clean" to industrial levels, which then became the first parcel available for joint sale to the City and County. After GSA completed negotiations with the City and County, post-negotiation environmental sampling revealed contamination on the parcel. GSA, the Army, the State of Tennessee, and the City and County met in June 2000 to initiate the early transfer process. Stakeholders worked together to develop and compile necessary documents, facilitate public comment, negotiate deed language, and obtain approval for early transfer.

Fourteen weeks after the initial stakeholders' meeting, the City and County acquired title to the 940 acres at an October 2000 closing ceremony. Property acquisition enabled the City and County to begin marketing the property as a new industrial park while the remediation was completed. GSA amended the deed with the CERCLA covenant that "all remedial action necessary" had been taken in March 2002.

In April 2005, the Army and GSA again utilized ETA to convey an additional 1,787 acres to the City of Chattanooga and Hamilton County. Completed in partnership with the Tennessee Department of Environment and Conservation, the acreage included negotiated sales for economic development as well as 12 acres to the local public utility. GSA amended the deed in December 2006 with the CERCLA covenant.

The City and County have developed the Enterprise South Industrial Park with the acreage acquired via negotiated sales. Enterprise South includes 3,000 developable acres and is certified as an automotive megasite poised to meet the community's goals for employment growth.



"The planning process was designed to ensure that the industrial park will attract the largest number of high-paying jobs and have the greatest economic impact possible after it is fully developed ... Enterprise South is well-positioned to produce tremendous dividends for our community."

*Bob Corker, Former Mayor
City of Chattanooga*