Department of Energy
Washington, DC 20585

December 18, 2013

The Honorable Tom Beehan
Mayor, City of Oak Ridge
Energy Communities Alliance Chair
1101 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036

Dear Mayor Beehan:

Thank you for your December 2, 2013 letter to Secretary Moniz expressing the concerns of the Energy Communities Alliance (ECA) about the Department of Energy's Final Rule for 10 C.F.R. Part 770, "Transfer of Real Property at Defense Nuclear Facilities for Economic Development" (78 F.R. 67925). Secretary Moniz asked that I respond on his behalf.

We are pleased to address the issues raised in your letter and by ECA Executive Director Seth Kirshenberg at our November 25 meeting on the Department's Final Rule, and we appreciate this opportunity to share our understanding of the Final Rule's effect and respond to your concerns. Given that the Final Rule cannot be withdrawn and reopened for public comment or amended to address the issues you raise without initiating a new rulemaking procedure, I hope that the response I am providing today will be sufficient to resolve your concerns.

Your letter raises two related concerns: that there were "significant changes" in the Final Rule from the Interim Final Rule on which public comment was received, and that it was published without eliciting additional public comment. Prior to issuing the Final Rule, an assessment was made that determined the changes were non-substantive in nature. The enclosed letter from the Deputy General Counsel to Mr. Kirshenberg explains why these changes are considered non-substantive and will therefore not alter the way in which land transfer requests are processed or which land is eligible under the Rule. I believe this letter addresses the concerns you raise in your letter regarding the content of the Rule, as well as the process.

The Department values our collaborative working relationship with ECA and its members. It has a long history of working in partnership with local communities, including yours, to transfer real property to promote economic development. Over the past several years, as a result of mission changes, the Department has transferred hundreds of acres to help stimulate local economies resulting in the construction of industrial parks, office complexes and other facilities, generating jobs and tax revenue. We are proud of our efforts to support local economic growth as the Department's mission evolves and will continue to work closely with local governments in the process.

We understand that communities have submitted requests for land transfers to the Department and that it is important for the Department to act on these requests more quickly. The Department is taking steps to improve the timeliness of our review process and we are committed to working with each requestor to approve mutually beneficial land transfer requests, and we continue to strive to improve our process.

I hope that this information clarifies the application of the Final Rule and helps address the ECA's concerns. The Department looks forward to continuing to work with the ECA, Community Reuse Organizations, local communities, tribes and other stakeholders to convey unneeded land for beneficial reuse.

Sincerely,

David M. Klaus
Deputy Under Secretary for Management
and Performance

Enclosure

Department of Energy
Washington, DC 20585

December 18, 2013

Mr. Seth Kirshenberg
Executive Director
Energy Communities Alliance
1101 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036

Dear Mr. Kirshenberg:

I write at the request of David M. Klaus, Deputy Under Secretary for Management and Performance. On November 25, the ECA met with Mr. Klaus to discuss the Department of Energy's Final Rule for 10 C.F.R. Part 770, "Transfer of Real Property at Defense Nuclear Facilities for Economic Development" (78 F.R. 67925). The Final Rule was issued on November 13, 2013 and was effective on December 13, 2013. As my colleagues explained during your meeting, the revised rule will not change the way in which land transfer requests will be processed by the Department or which sites will be eligible for land transfers.

I am informed that, during the meeting, you expressed the concern that adding the phrase "closed or downsized" to the rule would newly limit the defense nuclear facilities eligible for land transfers. The addition of the terms "closed or downsized" simply reflects that if a defense nuclear site has land that is unneeded, temporarily underutilized, or underutilized and the Department determines to consider transferring or conveying the land, this would be considered "downsizing." If there is land that is located on a defense nuclear facility, and is not subject to a land withdrawal order issued by the Department of the Interior, then that property can be considered for transfer and reuse.

During the meeting, I understand you also expressed the concern that the Final Rule was published without eliciting additional public comment. As was discussed during your meeting, the changes to the rule were published in final form since the changes were non-substantive in nature and the final rule responded to public comments that were received on the Interim Final Rule.

I hope that this information clarifies the application of the rule and helps address the ECA's concerns.

Sincerely,

Eric J. Fygi
Deputy General Counsel