December 2, 2013

Secretary Ernest Moniz  
U.S. Department of Energy  
1000 Independence Ave. SW  
Washington, DC 20585

Re: Withdraw changes to 10 CFR 770 and Facilitate Land Transfer to Communities to support DOE Missions

Dear Secretary Moniz,

Energy Communities Alliance (ECA) requests once again that the Department of Energy (DOE) use existing authorities to facilitate the transfer of real and personal property to communities. In addition, to facilitate public involvement and discussion, ECA requests that DOE withdraw the significant changes to 10 CFR 770 and allow for public comment and discussion before the Final Rule becomes effective on December 13, 2013.

DOE and every Secretary of Energy since Hazel O’Leary has determined that transferring excess property to communities can save the Department hundreds of millions of dollars and facilitate local economic diversification. In this time of shrinking budgets, DOE should take advantage of all opportunities to assist communities while also reducing overall DOE costs.

As DOE communities face thousands of layoffs and mission delays due to federal budget cuts, DOE should expeditiously transfer land and other assets to communities to encourage economic development and diversification and to support DOE’s missions. While the White House and the Department of Defense (DOD) implemented programs this summer to assist defense communities that have been impacted by downsizing and shrinking federal budgets, DOE is releasing regulations that negatively impact communities. We would like to work with you to implement changes that complement and facilitate land transfers.

Despite community efforts to encourage DOE to facilitate land transfer, DOE announced significant changes to 10 CFR 770, which regulates the transfer of land for economic development. We believe this Final Rule, issued with no opportunity for public input, will make it more difficult for DOE to transfer property to communities. The significant changes to the regulations which change the definition of sites that are eligible for using the regulation, eliminate the 90 day deadline for the Department to respond to land transfer requests from local
governments and Community Reuse Organizations (CROs), and remove indemnification protections from communities, will ultimately diminish the ability of the Department to facilitate land transfers in a timely manner.

We are requesting that DOE withdraw the significant changes to 10 CFR 770 and allow for public comment and discussion before the Final Rule becomes effective on December 13, 2013.

We appreciate that your staff quickly set up a meeting with the Deputy Under Secretary for Management and Performance, the Principal Deputy Assistant Secretary for Intergovernmental Affairs, the Senior Advisor for Environmental Management, the Office of Management, the Office of General Counsel and others to discuss the new Final Rule on 10 CFR 770. In our meeting, DOE officials identified that DOE would issue a letter that clarifies the definition of “closed and downsizing sites” and identifies that the changes in the Final Rule will have no impact on how DOE applies the regulations and that “downsizing” means the action of leasing or conveying property for economic development and does not mean a decrease in mission, funding, site employment, etc.

Still, our communities remain concerned that this Final Rule was issued without any opportunity for public comment. President Obama identified the importance of public participation in the regulatory process in Executive Order 13563: “Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with the law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholder in the private sector, and the public as a whole.” There is no impact to DOE to delay the effective date of the regulation and seek public comment.

Finally, many communities have already submitted formal requests for land to the Department. Many have been approved by the local site while in other cases the site continues to wait for leadership from headquarters to make decisions. It is imperative that DOE act on these requests more quickly so communities can begin to reuse land and create new opportunities. These existing requests for land should not be impacted by our request to withdraw the Final Rule on 10 CFR 770.

Please contact Seth Kirshenberg at (202) 828-2317 with any questions.

Sincerely,

Mayor Tom Beehan
City of Oak Ridge
ECA Chair

cc: ECA Vice-Chair Councilman Chuck Smith, Aiken County
    ECA Secretary Mayor Steve Young, City of Kennewick
ECA Treasurer Council Member Fran Berting, Los Alamos County
ECA Immediate Past Chair Councilman Robert Thompson, City of Richland
ECA Members
Seth Kirshenberg, ECA Executive Director
Bruce Held, Acting Undersecretary for Nuclear Security, DOE
David Huizenga, Senior Advisor for Environmental Management, DOE
Betsy Connell, Senior Advisor, Office of the Secretary, DOE
David Geiser, Director Legacy Management, DOE
Eric Fygi, Acting General Counsel, DOE
Ingrid Kolb, Director Office of Management, DOE
Alice Madden, Principal Deputy Assistant Secretary, Intergovernmental and External Affairs, DOE