UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MAY 18 2016

Michael L. Armstrong, Real Estate
David A. Smolen, General Counsel
GI DC Sunnyvale LLC
188 The Embarcadero, Suite 700
San Francisco, CA 94105

SUBJECT: Status of Property and Prospective Purchaser's Reasonable Steps
825 Stewart Drive, Sunnyvale, Santa Clara County, California
TRW Microwave Site Operable Unit of the "Triple Site"

Dear Messrs. Armstrong and Smolen:

The United States Environmental Protection Agency Region 9 ("EPA") understands that GI DC Sunnyvale LLC, a Delaware limited liability company ("Prospective Purchaser"), is in the process of acquiring the real property located at 825 Stewart Drive in Sunnyvale, California ("the Property') to be used for commercial purposes. Because the Property is located within the TRW Microwave Site Operable Unit of the AMD 901/902 Thompson Place Site Operable Unit/TRW Microwave Site Operable Unit/Philips Site Operable Unit/Offsite Operable Unit Combined Sites, of which the AMD 901/902 Thompson Place Site, TRW Microwave Site, and Offsite Operable Units are listed in the National Priorities List (the four Operable Units collectively, referred to by the informal term "Triple Site"), Prospective Purchaser has requested a letter regarding its status as a potential property owner at the Triple Site.

The Property is the subject of a previous Prospective Purchaser "Comfort Letter" issued on May 1, 2014 to 825 Stewart Acquisition Partners, LLC (the current owner, and "Seller" of the Property to the new Prospective Purchaser). That May 2014 Prospective Purchaser Comfort Letter provided that "Consistent with EPA policy, EPA does not anticipate taking enforcement action against future owners of the Property." The conclusion by EPA was based upon information at that time with respect to the remediation activities by Northrop Grumman Corporation ("Northrop"), the Responsible Party for the TRW Microwave Site Operable Unit and a joint Responsible Party for the Triple Site with two other Responsible Parties – Philips Semiconductors, Inc. and Advanced Micro Devices, Inc., conducted with oversight at the time by the Regional Water Quality Control Board, San Francisco Bay Region ("State") and EPA. Since that time, oversight for the Triple Site was transferred from the State to EPA and is currently being performed solely by EPA.

Based on information provided by the new Prospective Purchaser in the Phase I Environmental Site Assessment dated April 1, 2016, since the time of the May 1, 2014 letter, Northrop has undertaken additional actions at the Property, including, but not limited to:

1. Performing building improvements;

2. Decommissioning of the former on-Property groundwater extraction and treatment ("GWET") system;

3. Source area soil removal near the former waste solvent underground storage tank ("UST") inside the building;

4. Implementation of vapor mitigation measures, including installation of a passive Sub-Slab Vapor Collection System, interior monitoring and Eductor Pipe well destructions, concrete slab and penetrations sealing; and additional indoor air and sub-slab vapor sampling to determine the effectiveness of the vapor mitigation measures; and

5. Continued on-Property groundwater monitoring.

EPA understands that the new Prospective Purchaser intends to allow for the use of the Property as technology office space/research and development. The new Prospective Purchaser and any tenants will cooperate with EPA and Northrop by providing reasonable access to the Property for operations maintenance and monitoring of the indoor air and vapor intrusion control systems, groundwater monitoring, as well as any other current and future remedial activities, monitoring and implementation of institutional controls.

New property owners may be protected from CERCLA liabilities as Bonafide Prospective Purchaser ("BFPPs") pursuant to CERCLA. CERCLA's BFPP provisions, enacted in 2002 as part of the Brownfield's Amendments, state that new property owners meeting certain criteria are protected from CERCLA liability as long as they meet the requirements of a BFPP. Specifically, such property owners must conduct "all appropriate inquiry" prior to acquiring the property, take "reasonable steps" to control existing contamination after acquiring the property, and otherwise meet the requirements of Sections 101(40) and 107(r) of CERCLA.

Prospective Purchaser has provided to EPA a Phase I of the Property. As noted above, to qualify as a BFPP, a new landowner must take "reasonable steps" with respect to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases. Based on information evaluated to date, EPA believes the following appropriate reasonable steps should be taken by the Prospective Purchaser during its ownership with respect to the contamination at the Property:

1. Accommodation of the existing groundwater monitoring wells outside the footprint of the building and in any future construction of the Property;

2. Cooperation by providing reasonable access to the Property to EPA and EPA's designated representatives, as well as the Responsible Parties for the Triple Site, including, but not limited to, Northrop, and their designated representatives, acting under the direction and oversight of EPA, for investigation and remedial activities and monitoring as described above, as well as access for operation, maintenance and monitoring of the vapor intrusion mitigation system currently on the Property as well as any future remedial activities (including, but not limited

to, vapor intrusion control system operation and maintenance) that may be required by EPA;

3. Appropriate handling and monitoring of potentially contaminated soil or groundwater encountered at the Property;

4. Prohibition on conducting any groundwater extraction, monitoring, or other subsurface activities, or installing injection wells on the Property, without prior EPA approval;

5. A prohibition on building construction, renovation or other modification activities that may affect the integrity of the concrete slab or affect the integrity of the sub-slab vapor mitigation system, without the prior approval of EPA;

6. Where prior approval is required in Step #5 above, submit to EPA for review and approval a plan, and then implement such plan, to mitigate any potential preferential pathways for subsurface vapors to enter into the building as a result of such afore-referenced activities, and make any repairs necessary to ensure continued effective operation of the sub-slab vapor mitigation system;

7. Inform EPA of plans to redevelop the Property for any purpose other than its current use, including light industrial or residential occupancy, and if such redevelopment takes place take measures to mitigate any potential preferential pathways for subsurface vapors to enter into any structures; and

8. Cooperation with implementation of institutional controls at the Property to the extent required by EPA.

Please note this letter is provided solely for informational purposes and is based on the nature and extent of the contamination at the Triple Site and at the Property known to EPA at this time. If additional information regarding the nature and extent of hazardous substances contamination at the Property becomes available, additional or different actions may be necessary to satisfy the reasonable steps criteria.

The BFPP exemption has a number of continuing conditions beyond requiring the Property owner to take reasonable steps. This letter does not provide a release to the Property owner from CERCLA liability, but only provides information with respect to reasonable steps based on information EPA has available at this time.

In light of the foregoing, and consistent with EPA policy, EPA does not anticipate taking enforcement action against future owners of the Property. Please see EPA's guidance titled "Policy Towards Owners of Property Containing Contaminated Aquifers," at 60 Fed. Reg. 34790 (July 3, 1995).

Should you have any legal questions regarding this matter, please contact Thelma Estrada of our Office of Regional Counsel at (415) 972-3866, or by email to estrada.thelma@epa.gov. If you have technical questions, contact Melanie Morash of our Superfund Division at (415) 972-3050, or by email to morash.melanie@epa.gov.

Sincerely,

John Lyons
Acting Assistant Director
Site Cleanup Branch, Superfund Division