



November 16, 2012

PROJECT NO: 09-131

The Honorable John Cook  
Mayor of the City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

VIA E-MAIL

**RE: Proposed City Council Resolution regarding the stacks on the former ASARCO Smelter Site property (the "Property")**

Dear Mayor Cook:

The Trust has been provided with a copy of the Proposed Resolution to be presented to the City Council by the Save the Stacks group (the "Proposed Resolution"). The Trust understands that the City Council will be voting on adopting the Proposed Resolution during the November 27, City Council meeting. The Trust feels that it would be helpful to the City Council to hear the Trust's initial reactions to the language of the Proposed Resolution before making their decision whether to adopt such resolution.

***1) The suggested "requirement" that the Trust use its funds to repair and maintain the stacks violates the Environmental Custodial Trust Agreement (the "Trust Agreement") and the Court's Order approving the Trust Agreement***

The Trust was created by a Court Order entered by the United States Bankruptcy Court in the ASARCO bankruptcy. That Court Order approved the Trust Agreement which specifically addresses the obligations of the Trustee and the use of Trust money. The Trust Agreement does not allow the Trust money to be spent on rehabilitating the structural integrity of the stacks or the costs of ongoing maintenance as demanded by the Save the Stacks group. Any Trust money spent for that purpose would be a direct violation of the Court Order. The Trust Agreement specifically requires that the Trust money be spent first and foremost on the remediation and cleanup of the hazardous wastes found at the Property in a manner that will be protective of human health and the environment. In addition to the money spent on remediation and cleanup, the Trust Agreement also permits the Trustee to take any actions it feels appropriate in order to maximize the sale price of the Property to help pay for the remediation and cleanup cost. Lastly, the Trust Agreement permits the Trustee to spend money on administrative efforts to effectuate these primary purposes of the Trust – remediation and cleanup of hazardous wastes and the sale of the Property. There is no other Court approved use of Trust money, and the Trustee cannot be required to spend Trust money for any other purpose.

Project Navigator, Ltd.  
One Pointe Drive, Suite 320  
Brea, CA 92821

T 714.388.1800  
F 714.388.1839  
[www.recastingthesmelter.com](http://www.recastingthesmelter.com)

**2) *The City's costs of acquiring the Property, structurally bringing the Stacks up to appropriate Codes and annual maintenance thereafter, and lost tax revenues.***

If the City Council should decide that it wants to adopt the Proposed Resolution, with the understanding that the Trust cannot fund the suggested structural and environmental repairs and ongoing maintenance costs, then it will be the City who will have to pay for those costs and for the acquisition of the Property.

**(a) *Costs of acquiring the Property.***

The Trust has retained the services of a national brokerage firm to market the former Asarco properties (including the Property) taking into account the City's Dover Kohl vision or such properties. The brokerage firm has contacted several parties who have acquired other remediated industrial sites (several of which were smelter sites that were successfully remediated and developed) who are interested in the Asarco properties (including the Property). It is the brokerage consultants' opinion that if the stacks remain, those parties will no longer be interested in the Property. Based on these discussions, it is the brokerage consultants' opinion that the Property will be difficult, if not impossible, to market if the stacks remain on the Property. Thus, should the City resolve to acquire the stacks, the City will also need to acquire the Property (the main smelter site) at a purchase price at least equal to what the Trustee could have received from other interested parties who were willing to purchase the Property without the stacks.

**(b) *Costs to bring the Stacks up to code and continuing annual maintenance.***

The Engineers retained by the Trust have estimated that the cost of bringing the stacks up to current code standards and the annual ongoing maintenance of the stacks for the next fifty years is approximately \$14 Million. The Save the Stack group has suggested that this cost is not correct and that it should only cost \$4 Million. Either way, this is a cost that the City will have to plan on expending now and in the future. If the Save the Stack group is correct, the cost will be less, but unfortunately, you will not know the exact amount until those costs are actually incurred. Thus, the City should plan for the costs the Trust's experts have outlined. Please note that the technical reports prepared by the Save the Stacks group have not undergone peer review by the Trust. The Trust only received the reports two days ago, and is not currently in a position to agree or disagree with the conclusions put forward by the Save the Stacks group. Additionally, it would seem prudent for the City to have its own experts perform an independent review of the technical documents prior to any decision's being made by the City.

**(c) *Loss of Future Tax Revenues.***

As mentioned above, it is the opinion of the Trust's brokerage firm that if the stacks remain, it will be difficult, if not impossible to sell the Property. If the City were to acquire the Property in order to save the stacks from demolition, this would be a tremendous loss of potential tax revenue for the City since the property would not be developed. Based on our consultants' reasonable assumptions and analysis, they project that the value of the land and potential improvements that could be constructed thereon would generate approximately \$5,000,000 to \$5,500,000 in annual tax revenues for the City. If the City purchases the Property to save the stacks, not only will the City be spending the money to acquire the Property, spending money to restore/refurbish the stacks, and spending money for the ongoing maintenance obligations of the stacks, but they will also not collect these additional future tax revenues. This does take into account the money the City has already spent on the Dover Kohl analysis for the former ASARCO properties and the future vision that is no longer viable with the stacks.

**3) The City's liability for personal injury and property damage claims**

**(a) Personal injury claims**

Should the City acquire the Property, the City will also have to plan to assume the costs of liability for any personal injury claims under Texas premises liability law for injuries (or death) that any person might incur due to: 1) exposure to contaminants from the stack, or 2) injuries or death associated with some total or partial failure of the stacks which results in injuries to any person.

**(b) Property damage claims**

The fact that the City has governmental immunity from any claims for property damages caused by a partial or total failure of the stacks, is another basis for the brokerage consultants' opinion that the sale of the Property with the stacks on it will result in the Property being unmarketable.

Finally, although not required to do so, the Trust has taken important steps to preserve the historical significance of the Site, as summarized below:

1. The Trust has given ASARCO historical documents, maps and photographs to the University of Texas, El Paso to incorporate into their archives for educational and research purposes.
2. The Trust has allowed a professional photographer access to the Site so that all buildings, stacks and offices would be recorded in their pre-demolition condition.
3. The Trust provided ledgers, work materials and other ASARCO related memorabilia to the City which was incorporated into an excellent ASARCO exhibit at the El Paso History museum this past spring.
4. The Trustee also plans to leave the oldest building on the Site – the administration building, which dates back to the 1880s.

To suggest that the Trustee has not taken steps to preserve the cultural and historical importance of the Site is simply inaccurate.

The Trust encourages the City Council to consider these facts in regards to the Proposed Resolution.

Very truly yours,



Roberto Puga, P.G.  
Trustee

cc: El Paso City Council Members  
Ms. Sylvia Firth, El Paso City Attorney  
Ms. Joyce Wilson, El Paso City Manager  
Ms. Caroline Sweeney, TCEQ  
Mr. Carlos Sanchez, EPA  
Ms. Mary Koks, Trust Counsel