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Theo Oshiro
Make the Road NY

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Double Fault: The Negative Impact of the US Tennis Association on Flushing Meadows-Corona Park and Surrounding Communities

Abstract

Flushing Meadows-Corona Park (FMCP), Queens' flagship park, is the only major green space in the working class borough of over 2 million people. Queens residents and families use it for recreation, family gathering, soccer, baseball, cricket, picnics, boating, running, and other exercise. The park is heavily utilized with more than 20,000 people playing soccer every week in the organized soccer leagues - with countless others enjoying the park seven days a week. It is also currently home to several major private sports facilities, including the stadiums of the USTA's Billie Jean King National Tennis Center (NTC) and Citifield, home of the New York Mets.

The communities surrounding the park are diverse and lower income, with 75% of the surrounding residents being people of color and 40% living below the poverty line. Corona, a heavily immigrant neighborhood adjacent to the park, has the worst childhood obesity rate in the entire city at 51%.

In the waning days of the Bloomberg Administration, the park is being targeted as a building site for several of the Mayor's stated "Legacy" projects. Corporations are eager to acquire valuable land at low cost and with generous public subsidies for their own developments. The park and surrounding communities are under siege by corporate and political interests seeking to exploit this valuable public asset at the expense of the largely working class, immigrant population of Queens.

One of the three proposed projects is the United States Tennis Association's (USTA) bid to expand their already sizable footprint inside the park by capturing an additional .94 acres to their leasehold. The USTA estimates that the NTC expansion would bring an additional 10,000 spectators per day during the U.S. Open. The proposed \$500 million renovation would include the construction of a third tennis stadium, renovations to enlarge two existing stadiums, two new parking garages, a new road, up to 170,000-gsf of new retail space, and a dirty diesel fueled power plant.

This report examines the revenues and profits USTA has at its disposal as a result of their special siting within Flushing Meadows Corona Park. It further studies how much economic development occurs in the surrounding communities as a result of USTA's presence. Finally, this report will explore the extent to which the NTC is really open to the public as parkland.

Keywords

Flushing Meadows-Corona Park, FMCP, Queens, New York, communities, development

Comments

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DOUBLE FAULT

**THE NEGATIVE IMPACT OF THE US TENNIS ASSOCIATION
ON FLUSHING MEADOWS-CORONA PARK
AND SURROUNDING COMMUNITIES**

A Report by



March 2013

DOUBLE FAULT

**THE NEGATIVE IMPACT OF THE US TENNIS ASSOCIATION
ON FLUSHING MEADOWS-CORONA PARK
AND SURROUNDING COMMUNITIES**

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Executive Summary

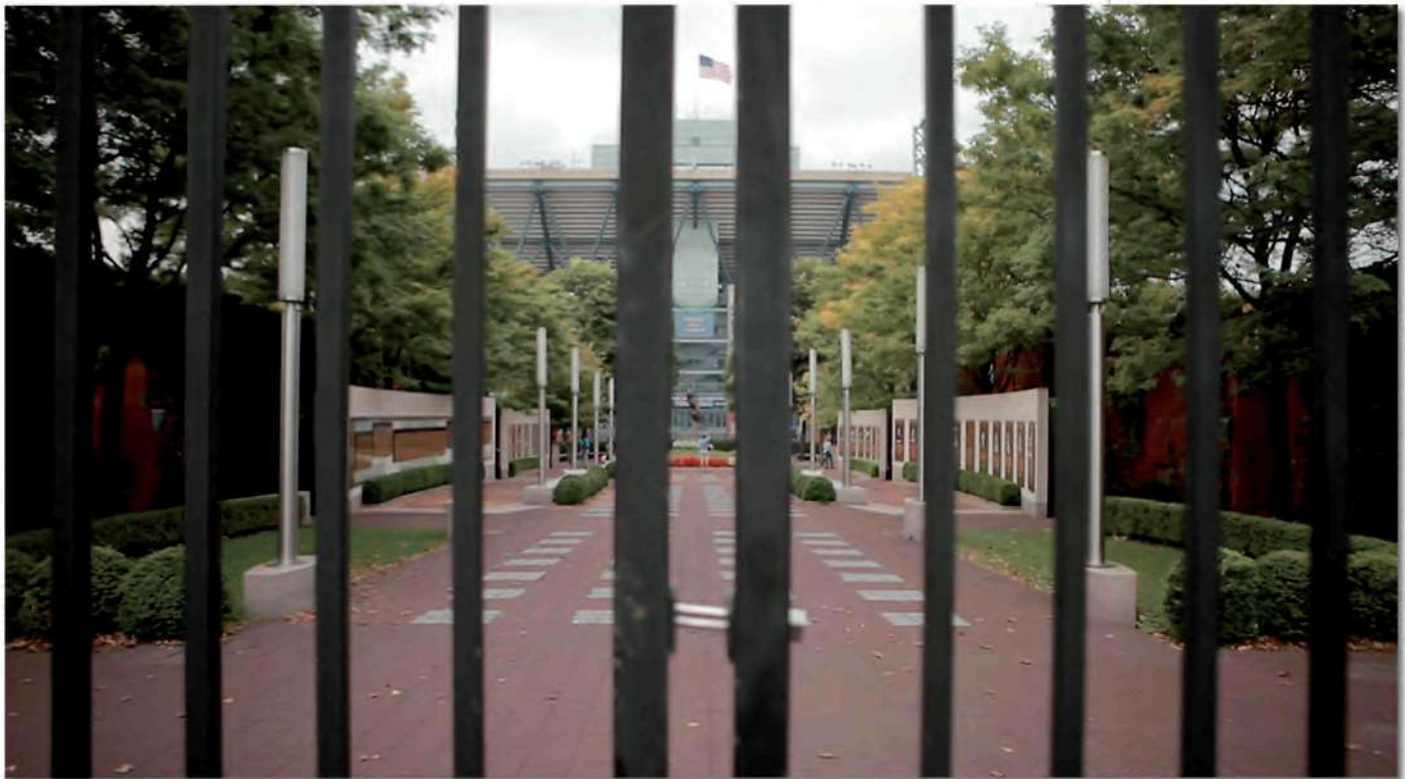
Flushing Meadows-Corona Park (FMCP), Queen's flagship park, is the only major green space in the working class borough of over 2 million people. Queens residents and families use it for recreation, family gathering, soccer, baseball, cricket, picnics, boating, running, and other exercise. The park is heavily utilized with more than 20,000 people playing soccer every week in the organized soccer leagues—with countless others enjoying the park seven days a week. It is also currently home to several major private sports facilities, including the stadiums of the USTA's Billie Jean King National Tennis Center (NTC) and CitiField, home of the New York Mets.

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This report examines the revenues and profits USTA has at its disposal as a result of their special siting within Flushing Meadows Corona Park. It further studies how much economic development occurs in the surrounding communities as a result of USTA's presence. Finally, this report will explore the extent to which the NTC is really open to the public as parkland.



This report will answer four key questions about the NTC project:

- What is the history of USTA's use of the parkland in Flushing Meadows Corona Park, and what exemptions and benefits has it received over time from New York City?
- What are USTA's employment practices and what sort of economic development will an expanded stadium bring to the city?
- What demographics are targeted by the USTA for use of its tennis courts and participation in the U.S. Open, as compared to the demographics of people that actually live in the neighborhood?
- Under the law, should the NTC be considered parkland?

These are overlapping, intersecting issues. But ultimately, they lead to the conclusion that the NTC is not truly open to the public. While the USTA is reaping huge economic rewards by hosting the U.S. Open at the NTC, those benefits are not making their way into the Queens communities that surround and depend on the Flushing Meadows-Corona Park.

The USTA site is not public.
It has an 8 foot high steel fence around the perimeter to keep the community out.

Key Findings

The USTA expansion, as proposed, would break a long-held legal precedent by not replacing parkland it is alienating. Corona has the highest childhood obesity rate in New York City. Loss of parkland here, which is critical to exercise, endangers the health of the local community.

- The expansion plan calls for a 20 foot high, 8 Megawatt, dirty diesel-fuel power plant to be built inside the park. This power plant would emit a massive amount of air pollution into the park and surrounding communities.
- Over time, NYC taxpayers have provided \$322,025,000 in City Bonds for USTA construction. 85% of the USTA's \$200,000,000 in annual revenue comes from events held on parkland in Queens. The USTA pays no property taxes, minimal rent, and a tiny portion of its revenue to the city. Despite massive NYC taxpayer subsidies, the majority of the organization's full-time, high salary jobs are based in Westchester.
- The USTA currently harms large sections of the park by encouraging more than 4,600 cars to drive and park on grass during the US Open. The USTA's new proposal will result in decimating 400 mature trees including state-listed endangered species willow oak trees.
- FMCP is a federally-protected Class B wetlands. Its natural purpose is to absorb flooding from storms. If more parkland is lost here, it will result in more flooding in the surrounding residential communities.
- The USTA site is not 'open to the public'. It has 8 foot high steel gates around the perimeter that are padlocked to keep the community out of the facility. The hourly court rental rates are the most expensive of any public courts in NYC. USTA events have prevented community soccer leagues from playing. The expansion would result in the removal of a bike lane that is a critical link for cyclists to enter the park.
- USTA generates only 127 direct and indirect jobs that are full-time for Queens residents. USTA seeks to build significantly more retail space on site which will negatively impact local small businesses by preventing spectators from going into the community.



- USTA's expansion plan will introduce significantly more traffic congestion, overwhelm local parking, and strain subways with more overcrowding.
- In 2008, the USTA CEO received \$9 million in compensation, while 8 other executives made between \$700,000 and \$1 million. The average pay for Olympic national governing body executives is \$228,456. The median income for tennis fans is \$150,000, while for Queens residents the median household income is \$56,406.
- The USTA is subject to a class action lawsuit in Federal Court for labor violations and failure to pay overtime to workers. An audit by the NYC Comptroller revealed that USTA understated its revenue to the City by \$31,185,978, and thus owes the City \$311,860.

The USTA site is not public.
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1. USTA's land-use agreements with New York City

"During the US Open, the traffic on the Grand Central Parkway is incredibly heavy and at times can be dangerous. Cars have to wait in line and go through what seem to be security checkpoints to access the park. If the USTA expands their stadiums, there will be even more traffic on our roads making for dangerous driving conditions and the access to the park will be even more difficult for local residents."

- Monica Juarez, Jackson Heights resident and participant at Queens Community House.

SUMMARY

- USTA NTC moved to Flushing Meadows Corona park in the 1970s, then expanded the NTC in 1993, which required alienation of parkland and legislative approval.
- In total, New York City has issued \$322,025,000 in City Bonds to finance USTA's work on the NTC (which USTA is obligated to repay).
- The U.S. Open earns over \$200 million dollars in revenue, about half of which is profits, meaning the USTA makes about \$100 million in profits from the U.S. Open.
- The USTA pays New York City only about \$500,000 a year in rent, and about \$2 million a year as a percentage of its revenue.
- An Audit by the NYC Comptroller revealed that USTA under-stated its revenue to the City by \$31,185,978, and thus owes the City \$311,860.
- While the USTA makes grants to encourage tennis players throughout the country, in the past two years no grants went to the neighborhoods surrounding the NTC.
- Two flyover Violations (when planes fly over the NTC during a U.S. Open match) cost the City a \$250,000 rent abatement, and three or more violations cost the City \$325,000 in rent abatement.

HISTORY

The USTA National Tennis Center (NTC) first called Flushing Meadows Corona Park home in the late 1970s, when the USTA renovated the Louis Armstrong stadium at the old World's Fair site. The City and USTA signed a 99 year lease in 1993 to expand the NTC. Arthur Ashe Stadium was built to hold more than 22,000 spectators, while Louis Armstrong Stadium was renovated and downsized, but still holds 10,000 people. To build the Arthur Ashe Stadium the site had to be expanded from 21.6 acres to approximately 42.2 acres, which required alienation of parkland. The NTC was required to find replacement parkland, and so acquired



Powell's Cove Park for the City. Only 7 acres of Powell's Cove Park are above land, while 17 are underwater marshland. The NTC is still considered "parkland," however, so it falls under the Federal Land and Water Conservation Fund (LWCF) Act and is subject to LWCF requirements. It is considered parkland because the "health, welfare, and recreational public purposes" of the NTC was recognized by the New York State Legislature, the New York City Council, the U.S. Department of the Interior, National Park Service (NPS), as consistent with the LWCF requirements governing Flushing Meadows Corona Park. Currently, the Arthur Ashe Stadium and the USTA Billie Jean King National Tennis Center can admit up to 33,000 people.

FUNDING FOR EXPANSION AND PROJECTS

The USTA claims that it spent \$285 million to build Arthur Ashe Stadium and to renovate Louis Armstrong Stadium and the grounds of the USTA National Tennis Center, and that the entire expansion project was funded entirely by the USTA, with no costs to the city or taxpayers. On its website, it also notes that "the USTA, in fact, operates the USTA National Tennis Center for the City of New York, paying in excess of \$1.5 million per year in rent. The facility remains completely public, as it has been since the association moved the U.S. Open there from the nearby West Side Tennis Club in Forest Hills in 1978." This may seem generous, but the USTA has gotten significant benefits from the City, and has made substantial profits from use of the NTC.

The 1993 Lease Agreement includes an offer by the City to take out up to \$150 million in City Bonds to finance the project. Bonds are still taxpayer funded, they are just paid for by future taxpayers. Then in 2003, the First Supplemental Company Lease Agreement was signed, providing for \$30,645,000 and \$19,355,000—totaling \$50 million in bonds—to be sold by the City to finance a new project at the NTC. The Second Supplemental Company Lease Agreement added \$101,215,000 in bonds in 2004, and \$20,810,000 in bonds in were added through the Third Supplemental Company Lease Agreement in 2007. In total, New York City has issued \$322,025,000 in City Bonds to finance USTA's work on the NTC. The reason USTA can claim that there was no city or taxpayer money used for the stadium is that these bonds are not paid off by the City, but through payments by USTA to the City. The First Supplemental Lease Agreement states that:

Hundreds of Queens residents protested the USTA expansion proposal at a Town Hall meeting hosted by the Fairness Coalition of Queens in Jackson Heights in October.





Over 500 Queens residents attended a September Town Hall meeting in Corona to protect Flushing Meadows Corona Park from the loss of parkland from the USTA Expansion.

[I]n the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of the State of New York or The City of New York, and neither the State of New York nor The City of New York shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility, including moneys received under this First Supplemental Agreement . . .

There are a similar statement in the original Lease Agreement, and the Second and Third Supplemental Agreements. Thus, while the City was involved in financing the projects, the USTA will ultimately have to pay back the debt incurred by the bonds. Nonetheless, when the USTA describes what it pays to the City, it must be acknowledged that the money is going to pay back the millions of dollars in financing that the City provided for the USTA, and is not just money that the City can use to improve the lives of its residents.



WHAT DOES NEW YORK CITY GET FROM THE DEAL?

1. Missing out on huge revenue:

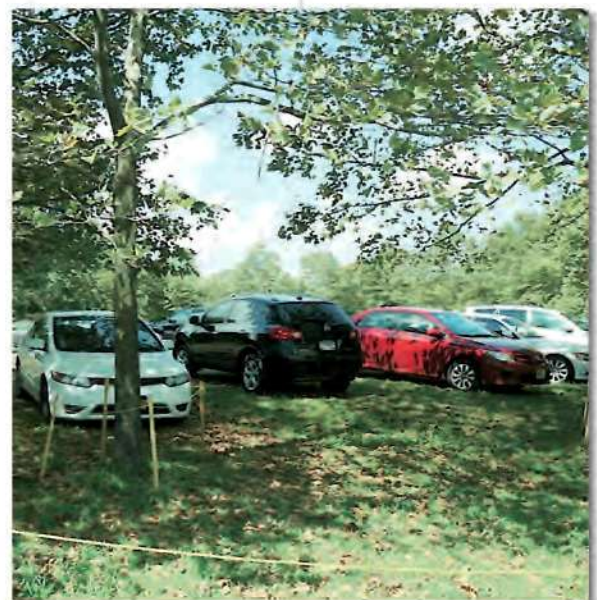
The NTC's relationship with the City is not so much a story of the City spending money as it is about the City missing out on opportunities to share in USTA's significant profits. The U.S. Open earns over \$200 million dollars in revenue, about half of which is profits, meaning the USTA makes about \$100 million in profits from the U.S. Open. Ticket revenue makes up about \$80 million of the annual \$200 million, sponsorships generate \$60 million, and the rest is made through concessions and merchandise. CBS alone pays between \$20 and \$25 million for broadcast rights to the U.S. Open. The money the USTA makes at the U.S. Open makes up about 85% of its revenue for the year, the remaining 15% coming mainly from membership dues.

2. No taxes and low rent:

Despite high profits, the USTA pays no property taxes, minimal rent, and a small portion of its revenues to the city. The original Lease Agreement provides that the NTC will not be taxed, primarily because the NTC is considered "parkland." USTA's lease with the City ensures it will pay only \$440,000 a year in rent for the first 10 years, \$481,000 a year for the next 10 years, and \$532,000 for the ten years after that, etc. The City is entitled to a portion of the net gross revenues for each year—\$25 million is subtracted from the net gross revenues, and USTA pays the City 1% of the remaining revenues. This means the City gets only about \$2 million a year from the USTA, despite the huge deductions in property taxes and large profit the U.S. Open generates. When you factor in how much of that money went to just paying back City Bonds for construction projects on the stadium, those contributions do not seem as significant.

Not only are the City's revenues meager in comparison to the USTA's earnings, but it was revealed that the USTA underestimated its earnings, and thus underpaid the City. In 2005, the City of New York Office of the Comptroller completed Audit Report on the Fees Due from The USTA National Tennis Center, Inc., And the Center's Compliance With Its Lease Agreement. The Audit Report concluded that "the USTA understated its revenue to the City by \$31,185,978. Consequently, the USTA owes the City \$311,860 in additional percentage rent." The USTA underreported its revenue from broadcasting, sponsorships, hospitality, and food concessions. The audit focused on the 2002 calendar year, tracing back some revenue

The USTA destroys entire sections of the park by encouraging thousands of cars and trucks to drive and park on grass.





NYC Council Member Julissa Ferreras speaks at a community march in December to protest development plans for Flushing Meadows-Corona Park. State Senator Tony Avella and Monsignor Thomas Healy also joined the march.



sources to 1996, and including revenue from others in 2003 and 2004. It is thus unknown how much underreporting there was in previous years, and whether or not this practice has continued.

The USTA has made contributions to the City, such as paying \$8 million in park improvements, \$2.25 million in roadway improvements, and it pays the City \$60,000 a year for use of parking. Of the 735 parking spaces on the actual premises of the stadium, the USTA is required to keep only 200 spaces open to the public (less than one third), even though it's allegedly public property. Additionally, the USTA likes to promote the philanthropic work that it does to promote tennis across the country, as it has granted over \$11 million to fund programs all over the country. But what about the neighborhood where the NTC is located? While some of those grants were given to other NYC programs, in the last two years (the time for which information was available) no grants went to the neighborhoods surrounding the Flushing Meadows Corona Park—the neighborhoods most affected by the loss of parkland and the disruption brought by the U.S. Open.

3. Flyover Violations:

Built into the USTA's lease with the City is a provision addressing "flyovers" by plane traffic associated with nearby LaGuardia Airport, requiring the City to "use best efforts" to work with the Federal Aviation Administration (FAA) to prevent planes from flying over the stadium during U.S. Open tournaments. Should six flyovers occur in one hour during a tennis match, or eighteen occur during the hours of the day when matches are played, one "Violation" has occurred. One Violation costs the city nothing, but two Violations costs the City a \$250,000 rent abatement, and three or more violations costs the City \$325,000 in rent abatement. When this provision was first put into effect, Mayor Giuliani came out strongly against it, stating that, "I believe it's outrageous for the city of New York to be in a situation where it has to pay fines to the USTA if airplanes fly over the tennis stadium," and added that the safety of neighborhood residents was threatened by the plan. The lease does allow for safety and capacity/delay considerations when determining whether a Violation has occurred, and by 2002 the provision had never been enforced. However, that does not mean that preventing such flyovers, and paying the price should one occur, is not a significant burden for the City.

2. USTA's economic impact on New York City and Queens

"The Tennis Association (USTA) definitely has not been a good neighbor. Personally, the USTA does not benefit me. Its expansion would affect my quality of life, health and tranquility, with the congestion, the traffic, the noise, and especially the contamination as well as the fact that it would make us more vulnerable to floods coming from Flushing Bay."

- Maria Julia Echart, Queens resident for 25 years and member of Make the Road NY.

SUMMARY

- Despite inflated claims, in reality, the USTA generates only 127 direct and indirect jobs that are full-time for Queens residents—and the (unknown) portion of those jobs that are indirect are not even created by the USTA itself.
- In 2008 the USTA CEO received \$9 million in compensation, while 8 other executives made between \$700,000 and \$1 million.
- While the average pay for Olympic national governing body executives is \$228,456, the new CEO at USTA makes around \$1.3 million a year.
- The USTA's job predictions may or may not be contradictory, but they do nothing to clarify what types of jobs will be available to Queens residents.
- There has been no evaluation of the socio-economic impact the expanded stadium will have on the area.
- USTA mentions how it benefits Queens residents directly almost exclusively when discussing its charitable work, but even those opportunities are typically one-day events, not generating lasting socio-economic change.
- Local businesses do not observe benefits from tennis fans attending the U.S. Open.

WHAT KINDS OF JOBS DOES USTA CREATE, AND WHERE ARE THOSE JOBS?

The USTA frequently touts the statistic that it creates 6,000 jobs through the U.S. Open. However, this number is deceiving, and hides the lack of economic impact the event has on the borough of Queens itself. First, the jobs are seasonal, not full-time jobs with benefits that workers need. The U.S. Open is only two weeks, so the employment window is brief. Then, only 41% of those employees are from Queens. By the USTA's own calculation, those "seasonal jobs" only yield the equivalent of 585 direct and indirect full and part time jobs for Queens



residents. Even that number does not show the full picture. Indirect jobs are those not hired by the USTA, but impacted by USTA expenditures, so they are not a direct benefit of the USTA's hiring practices. Additionally, the USTA does not clarify how many of those jobs are part-time, and how many are full-time. In fact, the USTA claims that it generates only 127 direct and indirect jobs that are full-time for Queens residents. Again, the 127 full-time jobs includes indirect jobs, so the USTA does not actually directly employ 127 full-time workers in Queens.

While the USTA is not a big employer of local workers, one area in which the USTA spares no cost is in paying its CEOs. Tax forms show that Arlen Kantarian, former CEO of the USTA received more than \$9 million in total compensation in his last year as CEO. His base compensation was about \$1.6 million, then he received about \$2.3 million in bonus and incentive compensation, and nearly \$5.2 million in other reportable compensation in 2008. The USTA not only paid Kantarian a seven-figure sum, but also paid two different executives more than \$1 million each, and a fourth executive just under \$1 million. Further, the USTA paid six other executives close to or more than \$700,000. That's nine employees who make about twice the rent the USTA pays the City. New leadership has not changed the high pay-scale at the USTA, as the new CEO, Gordon Smith, is the only executive of an Olympic national governing body that makes seven figures. While the average pay for such executives is \$228,456, Smith makes around \$1.3 million a year. The USTA not only pays its executives generously, it pays them more than any other comparable organization. The USTA may be a non-profit, but that doesn't mean it's not making certain people very wealthy.



USTA CEO Gordon Smith is one of the highest paid sports executives in the world with a salary of \$1.3 million a year.

WHAT KINDS OF JOBS WOULD AN EXPANSION OF THE NTC CREATE?

The USTA has struggled to give an accurate picture of the impact on local jobs the expansion of the NTC would generate. In one source, the USTA claims that "Construction Would Generate an Estimated 776 Full-Time Jobs (Approximately 80 Jobs Per Year) for Queens Residents Over a 10-Year Construction Period." There, the USTA does not clarify whether those are direct or indirect jobs. Elsewhere, the USTA alleges that, "Over an estimated 10-year construction build-out, the project will generate approximately 200 direct full-time equivalent jobs per year." Of course, it is unclear where those jobs will actually be located.

Finally, the USTA uses another opaque claim about job creation, by predicting that, “Including indirect and induced employment, construction will generate approximately 300 full time equivalent jobs in NYC and 330 full time equivalent jobs in NYS each year during the 10-year construction period.” Once again, this does not speak to the jobs that will be created in Queens specifically, nor does it address whether those full-time jobs are direct or indirect employment. The USTA’s job predictions may or may not be contradictory, but they do nothing to clarify what types of jobs will be available to Queens residents.

The USTA’s messaging around the jobs the expansion will create is unclear at best and misleading at worst. Perhaps the most telling indication of what the actual impact will be is in the Draft Environmental Impact Statement (DEIS), authored by the New York City Department of Parks and Recreation (DPR). In the section on Construction Impacts, the DEIS states that:

Construction would create direct benefits resulting from expenditures on labor, materials, and services, and indirect benefits created by expenditures by material suppliers, construction workers, and other employees involved in the construction activity. Construction also would contribute to increased tax revenues for the City and State, including those from personal income taxes.

This statement by DPR confirms USTA’s claims about economic benefits from construction, but does not specify what those benefits are, nor who will benefit from the work. Additionally, the DEIS has nothing to say about the economic benefits of the final expansion. In the Final Scope of Work, describing what will be studied in the DEIS, DPR notes that it is unnecessary to analyze the socioeconomic impact of the project. The City Environmental Quality Review, which guides what must be studied in the final EIS, notes that:

The objective of the CEQR analysis is to disclose whether any changes created by the project would have a significant impact compared to what would happen in the future without the project. . . . Usually, economic changes alone need not be assessed; however, in some cases their inclusion in a CEQR review may be appropriate, particularly if a major industry would be affected or if an objective of a project is to create economic change.

One of the primary reasons for the project seems to be to create economic change. Thus, the reason the socioeconomic impacts are not addressed by the DEIS must be that they are too small to be worth mentioning. If there are economic benefits to the USTA’s expansion project, they are for the USTA, not the Queens community.



WHAT IS THE LOCAL ECONOMIC IMPACT OF THE NATIONAL TENNIS CENTER?

"I don't think we really get the foot traffic," Michael Fann, manager of Roosevelt Avenue Sports Bar said. "I don't recall anyone saying 'I'm going to watch the Open.'" The problem, store owners say, is that the U.S. Open is self-contained. Fans exit the 7 train at Willets Point, walk down the boardwalk, and enter the Billie Jean King National Tennis Center — all without ever setting foot on a Queens street. Once inside the tennis center, fans have access to food, drinks, retail stores and ATMs.

- DNAinfo 9/5/12

Despite being located in Queens, the USTA gives no specific economic analysis for the general economic impact it has on the borough. All of the statistics they publish mention the revenues or economic value of the NTC and the U.S. Open for New York City as a whole, or for New York State. The USTA points out that during the U.S. Open, 16% of the City's hotel occupancy is connected to the event. However, it does not say how much of that economic value goes to Queens, and how many people are staying in hotels in Queens, and not in other boroughs. When the USTA does mention Queens specifically, it's to discuss its charity programs. However, many of the programs it runs for Queens residents are one-off events that do not create lasting socioeconomic development, such as giving out free tickets to Arthur Ashe Kids Day or bringing school children to the courts for one day through Project ACES. The USTA does partner with NY Junior Tennis League, and has a Schoolyard Tennis Program that benefits public school children by providing them with the resources to learn tennis, but those are both obligations of the USTA's lease with the City, as it is required to offer free/discounted clinics to learn tennis.

The only description of the direct economic impact on the Queens neighborhoods surrounding the stadium was a piece entitled "U.S. Open Foot Traffic Not Reaching Queens Small Businesses, Locals Say." The author spoke with business owners in the neighborhood to get an idea of the impact the U.S. Open had on their businesses. Some of the businesses did not feel a significant impact from the tournament.

The problem, store owners say, is that the U.S. Open is self-contained. Fans exit the 7 train at Willets Point, walk down the boardwalk, and enter the Billie Jean King National Tennis Center—all without ever setting foot on a Queens street. Once inside the tennis center, fans have access to food, drinks, retail stores and ATMs.

Thus, the U.S. Open does not bring people to Queens, it brings people to the NTC, and they never need leave the NTC to create the sort of foot traffic that would stimulate the local businesses nearby. Two industries in Queens do feel the impact, according to a spokesman for the Queens Economic Development Council—the airports and hotels. But that is far from taking advantage of all the amenities available in the surrounding neighborhoods.

WHAT WOULD THE LOCAL ECONOMIC IMPACT OF AN EXPANSION OF THE NTC BE?

As described above, the USTA does not clarify what portion of the additional revenue would be gained from expanding the NTC would go directly to Queens. The economic activity from construction and increase in attendance are both taken into account in benefits to the City as a whole, or to New York State. Neither the USTA nor the City has publicized the extent to which the expansion will benefit Queens and the neighborhoods bordering the NTC, specifically. As part of the NTC's expansion, DPR has developed a list of possible park improvement projects that the USTA could undertake—and DPR would make the final selection of which projects would be undertaken. However, as USTA is such an economic powerhouse, there should be the possibility for more benefits to the City than these potential projects that USTA would be obligated to do anyway since the expansion requires the alienation of parkland. Additionally, unless the structural issues described above are remedied, that prevent visitors from making it out of the NTC, more patrons at the U.S. Open will not mean more economic benefits for neighborhood businesses.



3. USTA's target demographics do not match the local Queens demographics

"What will happen if part of the park is given for businesses and commercial development? It would be tragic. The traffic would be horrendous. Many people would miss the quietude and the loneliness of the park. What about the children? What will they do? What about their mental and physical development? Where will the families and communities go for some good time and celebrations? The elderly use the park for a nice, little walk. What about them and their well-being? The growth of private development in the park will surely take away from the quiet atmosphere of the park. It will be absolutely devastating for community and family unity. I believe that, as a pastor and resident, our elected officials and those in authority should seriously consider about families, community, children, elderly and their interests before any decision is taken about giving a part of the park for commercial development."

- Father John Mendonca, pastor of Our Lady of the Angelus in Rego Park which is part of Queens Congregations United for Action.

SUMMARY

- The median income for tennis fans is \$150,000, while for Queens residents the median household income is \$56,406.
- The cost of a full-season pass for an adult to play on New York City tennis courts would only pay for three hours of prime court time at the NTC, while the cost of a child's pass would only pay for about 10 minutes.
- Despite USTA claims that they are for the public, NTC courts not listed on the NYC Parks website, although the 11 Flushing Meadows Corona Park tennis courts, located outside of the NTC, are listed separately.
- USTA mentions that "more than 70 high schools and colleges" use the NTC as their home court, but it only lists 43, and only 1 of those high schools and 4 of the colleges listed are public.
- The sponsors for the U.S. Open reflect their clientele, who look to the top, luxury brands (like Mercedes-Benz, Ralph Lauren, Grey Goose, Moët & Chandon, and Emirates) and the restaurants in the NTC featuring top chefs would likely be far too expensive for the average Queens resident.

WHO USES THE TENNIS COURTS?

Looking at those who use the tennis courts, and who attend the U.S. Open, there is a clear gap between who the USTA is catering to, and who makes up the neighborhoods where

the USTA is located. Tennis fans are a wealthy population, with a median income of \$150,000, as calculated by the USTA. Almost 80% of tennis fans are white. Queens does not match that profile. About 48% of Queens residents are foreign born, and only 50% are white. Per capita income for residents is \$26,234, median household income is \$56,406, and 13.7% of Queens residents live below the poverty level. That means that the median household in Queens earns only a third of what the median tennis fan makes. The areas directly surrounding the NTC are no better:

COMMUNITY DISTRICT	PERCENT UNEMPLOYED	MEDIAN HOUSEHOLD INCOME	MEAN HOUSEHOLD INCOME	PEOPLE BELOW THE POVERTY LINE
3 - Jackson Heights	8.9%	\$47,478	\$60,823	18.9%
4 - Corona	7.9%	\$41,858	\$55,740	20.3%
6 - Forest Hills	8.0%	\$62,314	\$86,085	9.4%
7 - Flushing	9.6%	\$53,249	\$72,199	13.3%
8 - Fresh Meadows	10.2%	\$56,179	\$73,904	11.6%

Overall, the typical resident of Queens falls far below the typical tennis fan's economic bracket.

Not only do Queens residents not fit the demographic for tennis fans, but the USTA is not making the NTC a financially feasible option for residents. While the USTA repeatedly claims that it "prides itself on operating seven days a week, 11 months out of the year for the general tennis public" it is questionable how open the courts really are. Court rental rates at the NTC start at \$22 an hour, and go up to \$66 an hour for prime-time court use. Comparatively, during the tennis season, DPR only requires players to pay for a tennis permit to use City courts. A full season permit costs \$200 for an adult aged 18-61, \$20 for seniors aged 62 and up, and for minors below 18 it only costs \$10. With a permit, players are free to play on any city tennis court, only having to pay for a \$15 reservation to play on Central Park or Prospect Park courts. Additionally, during the off-season, which lasts from the Sunday before Thanksgiving to the first Saturday in April, no permit is required to play on the City's courts, so players can play for free. The cost of a full-season pass for an adult would only pay for three hours of prime court time at the NTC, while the cost of a child's pass would only pay for about 10 minutes, representing a huge disparity between costs for courts at the NTC and DPR courts. In fact, despite their claims that they are for the public, NTC courts not listed on the NYC Parks website, although the 11



Flushing Meadows Corona Park tennis courts, located outside of the NTC, are listed separately. The high cost of the courts and their absence from the DPR's tennis permit program calls into question just how "public" the NTC courts really are.

Finally, the opportunities for young people to take advantage of the NTC courts are extremely limited. As described above, a minor could get a season pass to use City courts for half the cost of renting a NTC court for the cheapest hour available. Additionally, the NTC tries to inflate the impact it has on the community by mentioning how many children participate in Arthur Ashe Kids Day or Project ACES, but those are one-day programs that only bring children to the NTC to visit, not to develop their tennis skills over the long-term. Finally, the USTA mentions that "more than 70 high schools and colleges" use the NTC as their home court, but it only lists 43, and only 1 of those high schools and 4 of the colleges listed are public. Again, the "public" nature of the courts is questionable when so few public schools use the courts regularly, while so many private institutions are able to access them.

WHO ATTENDS THE U.S. OPEN?

Attending the U.S. Open is no more egalitarian than using the NTC's tennis courts. The cheapest tickets for the event, on the first day of the two-week tournament, start at over \$60, and go up to \$4,646 for the last day of the tournament (the cheapest tickets that day are \$267). Those are pricey tickets in a borough where the per capita income for residents is \$26,234 and 13.7% live below the poverty level. But the low-income Queens residents are not who the U.S. Open is targeting, anyway, as is evident from the sponsorships and restaurants that participate in the event. The inaccessibility of the sponsors at the U.S. Open is illuminated when juxtaposed with the sponsors for the Mets, whose stadium uses the same 7-train stop:

	METS	U.S. OPEN
CARS	Chevy, Mazda, Nissan, Toyota	Mercedes-Benz
CLOTHES	Modell's, New Era, Nike	Ralph Lauren
BEVERAGES	Anheuser-Busch, Jim Beam, Lieb Family Cellars, Pepsi, Southern Wine and Spirits	Evian, Grey Goose, Moet & Chandon, Heineken
TRAVEL	Amtrak, Delta Air Lines, Holiday Inn	Emirates, Westin Hotels and Resorts



The Mercedes-Benz luxury car is the official sponsor of the USTA event. Community access to the park is restricted, and public enjoyment of the park is severely hampered, by USTA events.

Looking at the types of sponsors that support “America’s pastime,” baseball, it’s clear that a much wealthier, more luxury oriented client is being courted by the U.S. Open. Someone driving a Chevy, wearing Modell’s, drinking a Pepsi, and staying at the Holiday Inn seems much closer to the demographic in Queens than someone driving a Mercedes-Benz, wearing the upscale Ralph Lauren label, drinking Moët and staying at a Westin Resort.

The restaurants available in the NTC do little to dispel the impression that the U.S. Open is not open to the public, but open to the rich. The high-end restaurants available to patrons are designed to cater to expensive tastes. Aces featured Chef Masaharu Morimoto, an iron chef whose restaurant in the City, Morimoto, has appetizers that

start at \$16, and entrees that range in price from \$28-\$39, not to mention a \$125 tasting menu. The new restaurant, Champions Bar & Grill, featured the culinary creations of Chef David Burke, who stated that he would oversee the kitchen throughout the tournament, personally. Some of the items on Champions’ menu were ash-crusted prime beef carpaccio, steak and lobster entrées, and cheesecake pops. The steak costs \$55, lobster \$46, and the cheesecake pops \$18 at one of Burke’s New York restaurants, Townhouse. Another concession at the NTC was the Moët Champagne Bar, serving the champagne of one of the U.S. Open’s sponsors to patrons. Finally, Chef Tony Mantuano, a James Beard Award-winner, was behind Wine Bar Food, which featured a “wide range of Italian wines.” And if Mantuano’s restaurant in Chicago, Spiaggia, is any indication, entrees will range in price from \$49 to \$149. By comparison, in the Met’s stadium, one of two “limited access” restaurants features a full dinner for only \$48—and numerous other restaurants that are more affordable.

The upscale, luxury quality of the sponsorships and restaurants participating in the U.S. Open make it clear that this is not an event for the general public, and certainly not for the average Queens resident. Expensive tickets and food make the experience inaccessible. Additionally, the wide availability of food within the NTC reinforces what neighborhood businesses already observed—people don’t leave the NTC once they get there. With everything they need available, fans are much less likely to patronize local restaurants and businesses.



4. Laws addressing use of parkland

"Protecting the park is important because this park is the biggest in Queens. We can do a lot of things at the park like swimming, ice skating and visiting places like the Mets Stadium and the Unisphere. I would like to see the park made more beautiful and all parts open to the public so that more people can enjoy their time there. The Tennis Center does not feel like part of the park."

- Hing Chan, 11th grader at Flushing High School and member of Asian Americans for Equality.

SUMMARY

- The “public trust doctrine” requires that legislative approval be obtained before the alienation of parkland for non-park uses.
- The nature of the use, not the user, determines whether a project has a public purpose or park use.
- There is no clear definition for what constitutes “park uses,” but some principles can be identified:
 - A non-park use is determined based on whether the facility offers “substantial satisfactions to the public,” only possible in a park setting.
 - Even if the proposed use of land is still parkland, if the final agreement is not consistent with the original proposal, any lease or agreement can be terminated.
 - Even where there would be no alienation of parkland, where the public would be deprived of valued park uses for at least five years, legislative approval is required.
 - If a project is intended to provide goods at luxury prices, it may call into question its operation as a public park facility.
- In a recent case, the judge granted an injunction to prevent the conversion of the North Pavilion of Union Square Park into a restaurant due to such factors as: you can barely see the park from inside the restaurant (meaning you lose the effect of eating in a park), the site is used by patrons, the presence of other establishments nearby negate the need for a commercial establishment in the park, and the proposed prices would “would make broad swaths of the public think twice before entering.” These factors should similarly preclude the NTC from being considered parkland.
- Visitors are technically able to enter the grounds of the NTC, but they are so separated from the rest of the park, and so much of the NTC is shut off, that the NTC is not used as the rest of the public park is.

LEGAL ANALYSIS

In the Final Scope of Work for the proposal to expand the NTC, the DPR asserts that



USTA seeks to build even more retail space on site which will negatively impact local small businesses by preventing spectators from going into the community.

the City will not seek replacement parkland for the additional area that NTC wants to add to its lease, because it will remain parkland.

[T]he leased area would remain publicly accessible in the same way the rest of the NTC is publicly accessible; and improvements and upgrades to existing sport fields and infrastructure within Flushing Meadows Corona Park would result in a more meaningful degree of public benefit than an in-kind replacement.

Even though the 1990s expansion of the NTC required replacement parkland, the USTA would now be able to put money towards projects, without replacing the parkland that will be lost in the expansion. The assertion that the NTC is publicly accessible to the typical Queens resident has been called into question throughout this report. Here, the report will explore what, legally, it means to be publically accessible.

The City's rights to parks and other public places is inalienable without legislative approval. In the precedential case, *Williams v. Gallatin*, the Court of Appeals of New York wrote that "no objects, however worthy . . . which have no connection with park purposes, should be permitted to encroach upon it without legislative authority plainly conferred." Since *Williams*, the courts have reaffirmed the "public trust doctrine" that legislative approval is required before



the alienation of parkland for non-park uses. If a private interest will benefit from the project it can still be a public use, as an “incidental” private benefit is not sufficient to invalidate a project that prioritizes a public purpose. Even charging a fee for some of the services provided does not invoke the public trust doctrine. Thus, a lease can be deemed invalid by finding that the land was alienated for non-park purposes and legislative approval was not obtained.

Courts have invalidated leases by municipalities where they found the property to be used for “exclusively private” use. In these cases, it was the nature of the use, not the user that mattered for the determination. However, there is no clear definition for what constitutes “public use” or park uses in the case law. Some principles can still be identified, though:

- A non-park use is not determined based on whether the facility “attracts people who are not already in the park,” but rather whether the facility offers “substantial satisfactions to the public,” only possible in a park setting.
- Even if the proposed use of land is still parkland, if the final agreement is not consistent with the original proposal, any lease or agreement can be terminated.
- Even where there would be no alienation of parkland, where the public would be deprived of valued park uses for at least five years, legislative approval is required.
- If a project is intended to provide goods at luxury prices, it may call into question its operation as a public park facility.

The Fairness Coalition of Queens received a massive outpouring of public support for its campaign to make sure that the park is protected from corporate greed. Petitions containing thousands of signatures of were delivered to City Hall in December.

The USTA destroys dozens of acres of precious green space by encouraging cars and trucks to drive and park on grass. Entire sections of the park are significantly less useful to the community year-round because lawns are decimated by car parking for USTA events.

This last point—the inaccessibility of the facility due to high expense or luxury quality of the goods—has been recognized by multiple courts as a relevant factor in determining whether the project really is for public use. In *Port Chester Yacht Club, Inc. v. Village of Port Chester*, the court declined to resolve the case on summary judgment because there remained a question of “whether certain segments of the public were unfairly excluded from joining the yacht club.” Even though the operators of the yacht club did not constitute a private, profit-making entity, there was still a question about whether the limited public access was sufficient to characterize the lease as serving “public purposes.”

In the much more recent case, *Union Square Park Community Coalition, Inc. v. New York City Dept. of Parks*, the judge granted an injunction to prevent the conversion of the North Pavilion of Union Square Park into a restaurant. His decision noted numerous factors that prevented the restaurant from being a unique park use: you can barely see the park from inside the restaurant (meaning you lose the effect of eating in a park), the site is used by patrons, the presence of other establishments nearby negate the need for a commercial establishment in





the park, and the proposed prices would “would make broad swaths of the public think twice before entering.” These factors that the court identifies as making the restaurant not “park use” are all equally applicable to the NTC. Inside the NTC there is no connection to the park itself, which is not viewable past the walls. In *795 Fifth Ave. Corp. v. City of New York*, which approved the building of a restaurant in Central Park as parkland, the judge wrote that patrons would be able to “gaze in quiet contemplation at the grass and upon the flowers and the other natural ornaments”—making the restaurant a park use—but none of those natural ornaments of the park are integrated into the NTC. This is particularly clear when compared to the 11 tennis courts located just outside the NTC, which are surrounded by the park. They provide the experience of playing tennis in the park, not the NTC. Further, their presence certainly negates the need for a commercial tennis center, and their significantly cheaper prices (discussed above) are more accessible to the public. By comparison, the expensive prices for court use at the NTC would certainly make the public “think twice” before using the courts. The clear differences between a public access park and the NTC calls into question its categorization as parkland.

Even if the City receives legislative approval for the NTC to expand, it would be questionable for it to be deemed part of the park. Visitors are technically able to enter the grounds of the NTC, but they are so separated from the rest of the park, and so much of the NTC is shut off, that the NTC is not used as the rest of the public park is. Some who try to enter are turned away if unable to pay to play tennis. When the NTC expanded in 1993 from 21.6 acres to 42, it was required to find replacement parkland, although, only 7 acres of the Park are above land, while 17 are underwater marshland. It is unclear why, in this most recent proposed expansion, the USTA is not required to find replacement parkland, and something more suitable for public use.



Hundreds of small business owners have joined the Fairness Coalition of Queens to protect Flushing Meadows Corona Park and protest destructive development plans that will destroy extremely valuable parkland.

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Queens Congregations United for Action

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