SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MCMILLAN PARK COMMITTEE,	)	
	)	
Plaintiff,	)	
	)	**2010 CA 001820 B**
v.	)	**Judge Judith N. Macaluso**
	)	**Calendar 9**
DISTRICT OF COLUMBIA,	)	
	)	
Defendant.	)	

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Before the court is "Plaintiff McMillan Park Committee's Motion for Summary Judgment" ("Motion"), filed on December 16, 2010. Extensive briefing ensued by both the McMillan Park Committee ("MPC") and District of Columbia ("the District).[1] Most recently, in response to the court's August 16, 2012 scheduling order, the District filed "Memorandum of Points and Authorities in [Further] Opposition to Plaintiff's Motion for Summary Judgment"[2] ("Further Opposition") and "Final Vaughn Index" on November 28, 2012, and MPC filed its "Reply to the District of Columbia's Further Opposition to Plaintiff's Motion for Summary Judgment" ("Reply to Further Opposition") on January 4, 2013. For the reasons stated below, the Motion is granted in part.

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[1] Prior briefing included an opposition filed by the District on February 11, 2011; MPC's reply, filed on February 15, 2011; "Notice of Filing Regarding District of Columbia's Compliance with the Court's Order of March 22, 2011," which included a revised *Vaughn* Index, filed by the District on September 26, 2011; "Plaintiff McMillan Park Committee's Supplement to Its Motion for Summary Judgment and Accompanying Memorandum of Points and Authorities," filed on October 26, 2011; and "Defendant District of Columbia's Response to Plaintiff McMillan Park Committee's Supplement to Its Motion for Summary Judgment . . . ," filed on November 10, 2011.

[2] In its Further Opposition, the District requests that the court "deny Plaintiff's Motion for Summary Judgment, and grant summary judgment to the District." (Further Opp'n 16). The court declines to consider the latter request because it is not raised in the context of a motion.

A. Applicable Principles of Law

1. Summary judgment

Summary judgment is a means of putting parties to their proof before the expense and delay of a trial. The device removes from the court system cases in which parties cannot present supporting evidence even after full opportunity for discovery. Appropriate use of summary judgment conserves judicial resources; the financial and temporal resources of the parties; and the resources of the community, as citizens who would otherwise be drafted as jurors are spared this duty for non-meritorious cases. As the United States Court of Appeals for the First Circuit has observed:

> Summary judgment is a device that has proven its usefulness as a means of avoiding full-dress trials in unwinnable cases, thereby freeing courts to utilize scarce judicial resources in more beneficial ways. Its essential role is to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required.

Mullin v. Raytheon Co., 164 F.3d 696 (1st Cir. 1999) (internal quotation marks and citations omitted). At the same time the procedure serves important considerations, however, it is applied cautiously and carefully because it denies a party the opportunity to go to trial.

To prevail on a motion for summary judgment, the moving party must demonstrate, based upon the pleadings, discovery, and any affidavits or other materials submitted, that there is no genuine issue as to any material fact in dispute and that the movant is therefore entitled to judgment as a matter of law. *Grant v. May Dep't Stores Co.*, 786 A.2d 580, 583 (D.C. 2001); Super. Ct. Civ. R. 56 (c). A trial court

considering a plaintiff's motion for summary judgment must view the pleadings, discovery materials and affidavits or other materials in the light most favorable to the defendant and may grant the motion only if a reasonable jury could not find for the defendant as a matter of law. *Grant*, 786 A.2d at 583 (citing *Nader v. De Toledano*, 408 A.2d 31, 42 (D.C. 1979)); *Bailey v. District of Columbia*, 668 A.2d 817, 819 (D.C. 1995). Affidavits submitted by the parties "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Super. Ct. Civ. R. 56 (e).

The moving party has the "initial burden of establishing that there is no genuine issue of material fact" in dispute. *Gilbert v. Miodovnik*, 990 A.2d 983, 988 (D.C. 2010). If the moving party carries this initial burden, then the non-moving party assumes the burden of identifying specific facts demonstrating a genuine issue for resolution at trial. *Id*. The non-moving party may not simply rest on conclusory allegations or denials of the movant's pleadings to establish that a genuine issue of material fact is in dispute, but must show there is sufficient evidence in support of the party's assertions to require a jury or judge to resolve the differing versions of truth. *Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 502 (D.C. 2002). A "metaphysical doubt" or "scintilla of evidence" will not suffice. *LaPrade v. Rosinsky*, 882 A.2d 192, 196 (D.C. 2005). There must be "some significant probative evidence tending to support the complaint so that a reasonable fact-finder could return a verdict for the non-moving party." *Lowrey v. Glassman*, 908 A.2d 30, 36 (D.C. 2006) (internal quotation and citation omitted). If the non-moving party fails to establish that a genuine issue

of material fact is in dispute, the moving party is entitled to summary judgment. *Boulton*, 808 A.2d at 501; Super. Ct. Civ. R. 56 (e).

2. *Vaughn* Index

Once a request has been received under the District of Columbia Freedom of Information Act ("D.C. FOIA"), the District is obligated to produce responsive documents. D.C. Code § 2-532 (2009). The statute allows for a number of exemptions to the general rule of production, but if the District withholds information, the government has the burden of justifying the non-disclosure. D.C. Code § 2-537 (b); *U.S. Dep't of Justice v. Reporters Comm. of Freedom of Press*, 489 U.S. 749, 778 (1989).[3]

The District may carry this burden by submitting a *Vaughn* Index or functionally equivalent filing, which identifies the exempted document and provides essential information justifying withholding. *Summers v. U.S. Dep't of Justice*, 140 F.3d 1077, 1080 (D.C. Cir. 1998). To suffice, the *Vaughn* Index (perhaps supplemented by affidavits or other evidence) must identify the exempted document; describe the specific exemption claimed; describe the way in which the document falls within the claimed exemption specifically enough to establish the elements of the exemption; and provide "supporting justification" for concluding that "any reasonably segregable" portions of the document have been provided. *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 *passim* (D.C. 1977); *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 257 (D.D.C. 2004).

[3] Case law interpreting the federal Freedom of Information Act is instructive authority with respect to D.C. FOIA except where the two acts differ. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 521 A.2d 517, 251 n.5 (D.C. 1989).

Declarations that are conclusory and non-specific cannot support the government's decision to withhold the requested documents. *King v. Dep't of Justice*, 830 F.2d 210, 219 (D.C. Cir. 1987).

The reasons for imposing this level of detail on the government are twofold. First, the fact that the party seeking disclosure lacks access to the allegedly exempted documents "undercuts the traditional adversarial theory of judicial dispute resolution." *Mead Data Central*, 566 F.2d at 251. Sufficient detail must be provided to expose the "reasons behind [the agency's] conclusions," so that the requester can argue effectively against the exemption claims. *Id.* at 251, 260. This level of detail is also needed to enable the court to perform its function as an independent reviewer of the government's decisions. *Id.* It is fundamentally inappropriate for the court to be placed in a position of advocacy. For example, if the District advances the deliberative process privilege, it is not the court's role in the first instance to determine what policy is being advanced, whether the document is pre-decisional, and whether the information contained in the document has been revealed to outside parties.

In evaluating whether the District has carried its burden of justifying withholding the documents in question, the court must apply D.C. FOIA's exemptions "as narrowly as consistent with efficient Government operation." *Id.* at 251 n.16. No deference is accorded the government's representations; they carry no more weight than those of any other litigant in an adversarial contest before the court. *Id.* at 251.

There is no question that the principles of law applied to the government's withholding of documents under FOIA are onerous. This fact has been observed for over thirty-five years with few judicial tears shed. As early as 1977, the United States Court of Appeals for the District of Columbia Circuit noted, as it analogously imposed meticulous requirements upon the federal government:

> Certainly these procedures add significantly to the resource costs an agency must bear if it chooses not to disclose material it has in good faith decided is exempt. Those burdens may be avoided at the option of the agency, however, by immediate disclosure. Congress has encouraged the agencies to disclose exempt material for which there is no compelling reason for withholding, and an agency's own balancing of the resource costs of justifying nondisclosure against the value of secrecy may provide a rough estimate of how compelling is its reason for withholding.
>
> Requiring a detailed justification for an agency decision that non-exempt material is not separable will not only cause the agency to reflect on the need for secrecy and improve the adversarial position of FOIA plaintiffs, but will also enable the courts to conduct their review on an open record and avoid routine reliance on *in camera* inspection.

Id. at 261-62.

The exacting requirements imposed upon the District in carrying its burden of proof can come as no surprise in the context of this litigation. On September 10, 2010, the District produced its first *Vaughn* Index, which consisted of thirteen pages of entries for 205 documents. On March 15, 2011, the court denied the District's motion for summary judgment and in so doing noted that "the District's argument that the instant case became moot by virtue of the District's production of responsive e-mails and a *Vaughn* Index lacks merit because the District still has the burden of showing that it has provided sufficient information to justify nondisclosure." (Order 4, Mar. 15, 2011) (citing *Washington Post Co. v. Minority Bus. Opportunity Comm'n*,

500 A.2d 517, 521 (D.C. 1989). On March 22, 2011, the court ordered the District to submit a revised *Vaughn* Index because "[t]he District's description of the nature of the withheld e-mails offers very little information for MPC or the court to understand the full scope of what was included in the messages and whether exclusion of the entire document is justified." (Order 5, Mar. 22, 2011).

On September 26, 2011, the District submitted its second *Vaughn* Index, which was expanded to seventeen pages. This *Vaughn* Index was accompanied by an affidavit from OMPED's FOIA officer Ayesha Abbasi and an affidavit from Vision McMillan Partners' representative Adam Weers. In addition, the District produced ten previously withheld documents. To evaluate the sufficiency of the District's production, on March 26, 2012 the court directed the District to provide a copy of withheld documents to chambers for *in camera* review. (Order 4, Mar. 26, 2012).

The court began its *in camera* review of documents that the District withheld, but immediately found "that the listings for seven of the eight documents chosen at random are blatantly inadequate." (Order 12, Aug. 16, 2012). The court abandoned further analysis, satisfied that "the District has to start virtually from scratch if it wishes to withstand [MPC's motion for summary judgment]." (*Id.*) The court further noted:

> [I]f the court were to rule upon the Motion on the existing record, the Motion would be granted. Instead of doing so, however, the court will set forth the parameters of its analysis and provide the District of Columbia with *a final (third)* opportunity to justify its withholding of documents in accordance with the requirements of D.C. FOIA.

(*Id.* at 2) (emphasis added). Lest the District take its burden lightly, the court specifically emphasized many of the principles set forth earlier in this section:

> To suffice, the Vaughn Index (perhaps supplemented by affidavits or other evidence) must identify the document; describe the specific exemption claimed; describe the way in which the document falls within the claimed exemption specifically enough to identify the elements of the exemption; and provide "supporting justification" for concluding that "any reasonably segregable" portions of the document have been provided.

(*Id.* at 2-3). Moreover, the court added:

> [T]he court emphasizes two of the requirements discussed above. . . . To suffice, the Vaughn Index and associated materials must describe the way in which the document falls within the claimed exemption specifically enough to identify the elements of the exemption; and must provide supporting justification for concluding that any reasonably segregable portions of the document have been provided. Declarations that are conclusory and non-specific cannot support the government's decision to withhold a document.

(*Id.* at 13). The court also noted:

> There is no question that the principles of law applied to the government's withholding of documents under FOIA are onerous. This fact has been observed for over thirty-five years with few judicial tears shed.

(*Id.* at 4). Finally, the court emphasized:

> The submittal permitted by this Order will the District's third. If this response is inadequate, the court will likely conclude, as contemplated by *Mead Data Central*, that the government has decided withholding the documents is not worth the investment of time and attention needed to prepare a record that conforms to D.C. FOIA's requirements.

(*Id.* at 13).

On November 28, 2012, the District submitted its "Final *Vaughn* Index." The Index is 59 pages and is accompanied by another affidavit from FOIA officer Ayesha Abbasi. Notwithstanding its increased length, this third *Vaughn* Index falls short of

the requirements for claiming exemptions of which the District has repeatedly been apprised with respect to many of the documents the District seeks to exempt.

3. Exemption 1--trade secrets and commercial or financial information

Exemption 1 to D.C. FOIA permits nondisclosure of "[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained." D.C. Code § 2-534 (a)(1). At a minimum, the District bears the burden of establishing "(1) that the party from whom the information was obtained faces actual competition, and (2) that disclosure will cause substantial competitive injury." *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 522 (D.C. 1989) (citation omitted); *see also Judicial Watch*, 297 F. Supp. 2d at 257 (observing that "[the] agency's affidavit describing the withheld documents must be specific enough so that the elements of the privilege can be identified").

4. Exemption 4--inter-agency or intra-agency communications

Exemption 4 protects from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." D.C. Code § 2-534 (a)(4). As a threshold matter, the District must first establish that the documents were inter-agency or intra-agency communications; *i.e.*, they were generated by executive branch agencies or outside consultants who effectively functioned as agency employees. *See, e.g.*, *U.S. Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1 (2001); *Nat'l Inst. of Military Justice*, 512 F.3d at 682. The inclusion of

such outside consultants within the scope of Exemption 4 is referred to as the "consultant corollary." *Klamath Water Users Protective Ass'n*, 532 U.S. at 10; *see also Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677, 680 (D.C. Cir. 2008) ("When an agency record is submitted by outside consultants as part of the deliberative process, and it was solicited by the agency, we find it entirely reasonable to deem the resulting document to be an 'intra-agency' memorandum for purposes of determining the applicability of Exemption 5."). The consultant corollary is unavailable where, instead of being identified with the purposes of the agency, outside parties have "their own, albeit entirely legitimate, interests in mind" and are "seeking a Government benefit at the expense of other applicants." *Klamath Water Users Protective Ass'n*, 532 U.S. at 12.

Once the District has established that the communication was generated by a person included within the exemption, the government must demonstrate that the communication is within the scope of documents protected by Exemption 4. The exemption covers a limited class of documents: those included in statutory privileges and those excluded from civil discovery by case law or court rules. U.S. DEP'T OF JUSTICE, GUIDE TO THE FREEDOM OF INFORMATION ACT (2009) at 357-58 and cases there cited. To justify nondisclosure, the District must show that the type of material withheld is generally protected for reasons similar to those asserted by the government in the D.C. FOIA context. *See Burka*, 87 F.3d at 517 (noting that discovery exclusions applicable in FOIA context to extent that similar rationale exists).

5. Other requirements

Included in almost all protected categories is the requirement that the information at issue has not been distributed to an outside party. *See Klamath Water Users Protective Assoc.*, 532 U.S. at 12 (applying internal communication restriction to deliberative process privilege in federal FOIA context); *Mead Data Central*, 566 F.2d at 254 (applying confidentiality restriction to attorney client privilege in federal FOIA context). Other restrictions may also apply, depending upon the District's specific rationale for exempting the agency communication. *See, e.g.*, *id.* at 256 (under federal FOIA, deliberative process privilege does not include factual material unless it sufficiently exposes agency's deliberative process). The District's burden to be specific enough so that the elements of the exclusion can be identified requires specific reference to (a) the applicable law for each privilege or other basis for exclusion and (b) the relationship between those legal principles and the content sought to be excluded.

C. Discussion

In its proposed order, MPC requests that the court order (1) "that the District immediately disclose to MPC documents 1, 7, 10, 14, 27, 29, 56a, 72, 81–93, 95–102, 106–131, 133–168, 170d, 171c, 172b, 174–180, 183–186, 189–190, 195, and 200–205," and (2) "that the District reconsider the possibility of releasing portions of documents 3a, 4a, b, 5a, b, c, 6a, b, 8a, b, d, 9a, b, d, 17a, b, 18 a, b, c, 19a, b, 20a, b, 23b, 24a, 24d, 25b, 28a, 30, 31a, c, 32, 33a, b, c, 35, 36d, 37c, 42a, c, 43c, 54, 55a, b, c, 56b, c, d, 57, 59a, 60, 61a, 62d, 64a, 65d, 66, 67, 68g, h, i, 73a, 76b, 77a, 78, and 79." (Reply to Further Opp'n at 15).

Unfortunately, the document numbering system provided by MPC differs from that used by the District. The court is not critical of MPC, however; in fact, the departure from the District's numbering convention was necessary. The "Final *Vaughn* Index" that the District submitted on November 21, 2012 includes "ID" numbers 1 to 205. In the District's list, a single ID number frequently includes more than one document. For example Document 1 includes two emails, each separately listed but both bearing ID number 1. Similarly, Document 2 includes four emails, all identified with the ID number 2. In its response, MPC included a version of the District's "Final *Vaughn* Index" with an additional column of "Sub ID" numbers that broke out individual emails. As a result, the two emails under Document 1 are labeled "1a" and "1b," respectively. For the sake of clarity, the court uses MPC's system of identification in the discussion below.

A further impediment to clarity is that, in its proposed order, MPC asked the court to require the District to release all documents under several document numbers for which certain emails have already been produced. For instance, MPC requested that Document 1 be released in its entirety, but the District represents that it already released Document 1a. Below, the court specifically discusses only documents within the range of MPC's request that have not been fully released.

Document 1b

Exemption is unsupported. The District asserts that this email is appropriately redacted as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained" under Exemption 1. Specifically, the District claims that

Document 1b contains "Email communications between development team and District containing financial information about costs and estimated values provided to the District by the development team and to be reflected in a Term Sheet." (Final *Vaughn* Index Sub ID 1b).

To establish the degree of harm that VMP would suffer should these documents be released, the District refers to the affidavit of Adam Weers in which he attests:

> Public release of the information contained in [the email] would cause substantial harm to VMP as it would reveal confidential and material aspects of VMP members' methods of doing business and specific aspects of VMP members' plans for the project including; potential land values, potential deal structure, VMP members' financial capacity and capability, projected rents and sale prices for the project, VMP members' capitalization structures, cost capital and anticipated investment returns, and other information that would provide a significant competitive advantage to VMP's competitors if released.

(Weers Aff. ¶ 12, Sept. 23, 2011). Neither the *Vaughn* Index nor the Weers Affidavit, however, provides "supporting justification" for concluding that "any reasonably segregable" portions of the document have been provided.

While at least one paragraph of the email indeed contains project financial information, there is no explanation in the Weers Affidavit why release of this information is likely to cause substantial competitive injury. The District uses the quoted portion of the Weers Affidavit to justify withholding, under Exemption 1, of 114 documents. Yet the Affidavit does not discuss the specific content of any of the 114 documents or the nature of the competitive harm that would be visited on VMP by specific disclosures. The affidavit merely presents generalized, conclusory boiler plate, which is insufficient for the District to carry its burden "of establishing

that the provider of the information faces actual competition and that disclosure will cause competitive harm." (Order 4-5, Aug. 16, 2012).

Finally, several other paragraphs for which an exemption is claimed describe logistics for executing the Amended Term Sheet and other details that quite obviously fall outside Exemption 1. Document 1b shall therefore be released in its entirety.

Document 3a

Exemption is supported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes Document 3a as "Internal email with attached draft documents containing legal advice of Paul Mathis, Esq. regarding edits to financial and other terms being negotiated between the development team and the District." (Final *Vaughn* Index Sub ID 3a). The released portions of the email demonstrate that the communication was exclusively exchanged between attorneys from the Office of the Attorney General ("OAG") and a District employee. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is protected by Exemption 4.

Documents 4a and b

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes Documents 4a and b as "Internal email [containing/seeking] legal advice of Paul Mathis, Esq. regarding edits to financial and other terms being negotiated between the development team and the District."

(Final *Vaughn* Index Sub ID 4a; 4b). The released portions of the emails demonstrate that the communications were exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are protected by Exemption 4.

Document 5a

Exemption is supported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege and deliberative process privilege under Exemption 4. Specifically, the District describes Document 5a as "Internal email seeking legal advice of Paul Mathis, Esq. and reflecting internal discussions regarding preliminary terms and policies for negotiations between the development team and the District." (Final *Vaughn* Index Sub ID 5a). The released portions of the email demonstrate that the communication was exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is protected by Exemption 4.

Documents 5b and c

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes Document 5b as "Internal email containing legal advice of Paul Mathis, Esq. and reflecting internal discussions regarding preliminary terms and policies for negotiations between the development team and the District" (Final *Vaughn* Index Sub ID 5b), and Document 5c as "Internal email seeking legal advice of Paul Mathis, Esq. regarding preliminary terms and policies for

negotiations between the development team and the District" (Final *Vaughn* Index Sub ID 5c). The released portions of the emails demonstrate that the communications were exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are protected by Exemption 4.

Documents 6a and b

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes Document 6a as "Internal email containing legal advice of Paul Mathis, Esq. and reflecting internal discussions regarding preliminary terms and policies for negotiations between the development team and the District," and Document 6b as "Internal email seeking legal advice of Paul Mathis, Esq. regarding preliminary terms and policies for negotiations between the development team and the District." (Final *Vaughn* Index Sub ID 6a; 6b). The released portions of the emails demonstrate that the communications were exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are protected by Exemption 4.

Document 7a

Exemption is unsupported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege and deliberative process privilege under Exemption 4. The only basis that the District provides, however, is "a-4." (Final *Vaughn* Index Sub ID 7a). The released portions of the email do establish that

the communication was exclusively exchanged between attorneys from the OAG and a District employee; but the *Vaughn* Index fails to establish that the communication is protected by Exemption 4. As a result, the District shall release Document 7a in its entirety.

The project summary term sheet: Documents 7c, 14c, 110b, 113c, 117b, 129b, 131b, 142b, 146b, 147c, 150c, 151b, 157b, and 200c

Each of these document Sub ID numbers includes the same item titled "Project Summary Term Sheet." In each instance, the District's exemption is unsupported. The District asserts that the entire "Summary Term Sheet" and "Amended Summary Term Sheet" are withheld as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained" under Exemption 1. Various drafts of this document are included in the District's production as documents 7c, 14c, 110b, 113c, 117b, 129b, 131b, 142b, 146b, 147c, 150c, 151b, 157b, and 200c. Specifically, the District claims that the documents fall under Exemption 1 as a "Draft Term Sheet containing financial information about costs and estimated values provided to the District by the development team." (Final Vaughn Index *passim*). To establish the degree of harm that VMP would suffer should these documents be released, the District refers to the affidavit of Adam Weers in which he attests:

> Public release of the information contained in [the summary term sheet] would cause substantial harm to VMP as it would reveal confidential and material aspects of VMP members' methods of doing business and specific aspects of VMP members' plans for the project including; potential land values, potential deal structure, VMP members' financial capacity and capability, projected rents and sale prices for the project, VMP members' capitalization structures, cost capital and anticipated

> investment returns, and other information that would provide a significant competitive advantage to VMP's competitors if released.

(Weers Aff. ¶ 12, Sept. 23, 2011). This is the same reference advanced to justify withholding of Document 1b. As noted, the paragraph is conclusory and generalized boiler plate, devoid of specifics linking specific content to the creation of specific harm.

Despite the District's contention that the versions of the summary term sheet contain nonsegregable commercial and financial information, review of the first several pages reveals the overbreadth of that argument. To illustrate, pages 1-4 of the summary term sheet contain broad descriptions of the McMillan Sand Filtration Site, the redevelopment project, and VMP's role in the project. Nowhere in the Weers Affidavit or the *Vaughn* Index does the District address with sufficient specificity what substantial harm VMP will suffer if that seemingly innnocuous information is released to MPC. The District has thus failed to meet its burden of establishing that the summary term sheet and its drafts fall within Exemption 1, and the District shall release the following documents in their entirety: 7c, 14c, 110b, 113c, 117b, 129b, 131b, 142b, 146b, 147c, 150c, 151b, 157b, and 200c.

Documents 8a, 8b, 8d, 9a, 9b, and 9d

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes each document as "Internal email containing legal advice . . . regarding the development team's proposed language for the guarantee summary." (Final *Vaughn* Index Sub ID 8a; 8b; 8d; 9a; 9b; 9d). The released portions of the emails demonstrate that the communications were

exclusively exchanged between attorneys from the OAG and a District employee. Therefore, the *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are protected by Exemption 4.

Document 10b

Exemption is unsupported. The District asserts that this email is appropriately redacted as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained" under Exemption 1. Specifically, the District claims that Document 10b contains "Email reflecting development team's financing plans for the McMillan project." (Final *Vaughn* Index Sub ID 1b).

To establish the degree of harm that VMP would suffer should this email be released, the District refers to the affidavit of Adam Weers in which he attests:

> Public release of the information contained in [the summary term sheet] would cause substantial harm to VMP as it would reveal confidential and material aspects of VMP members' methods of doing business and specific aspects of VMP members' plans for the project including; potential land values, potential deal structure, VMP members' financial capacity and capability, projected rents and sale prices for the project, VMP members' capitalization structures, cost capital and anticipated investment returns, and other information that would provide a significant competitive advantage to VMP's competitors if released.

(Weers Aff. ¶ 12, Sept. 23, 2011). The generalized and conclusory nature of this boiler plate has already been discussed. *See, supra*, pp. 13, 18.

In addition, neither the *Vaughn* Index nor the Weers Affidavit provides "supporting justification" for concluding that "any reasonably segregable" portions of the document have been provided. For instance, several sentences contain logistical information about preparation of the Guarantee Summary that cannot

reasonably be construed as consumer or financial information. The District therefore has failed to establish that it has provided all reasonably segregable portions of Document 10b, and it shall be released in its entirety.

Document 14a

Exemption is supported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege and deliberative process privilege under Exemption 4. Specifically, the District describes Document 14a as "Email with attached draft document seeking legal advice of Paul Mathis, Esq. and JonPaul Morris, Esq. regarding McMillan Term Sheet." (Final *Vaughn* Index Sub ID 14a). The released portions of the email demonstrate that the communication was exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is protected by Exemption 4.

Documents 17 and b

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes both documents as an "Internal email discussing potential confidentiality agreement." (Final *Vaughn* Index Sub ID 17a; 17b). In addition, the released portions of the emails establish that they were exclusively exchanged between attorneys from the OAG and District employees. The *Vaughn* Index entry indicates that District employees were discussing a "potential," and thus predecisional, agreement. As a result, the emails are adequately protected by Exemption 4.

Documents 18b and c; 19a and b[4]

Exemption is supported for all four documents. First, the District asserts that Documents 18b and 19a – which contain the same email – are appropriately redacted to preserve the attorney-client privilege under Exemption 4. Specifically, the District describes the communication as an "Email containing legal advice of Paul Mathis, Esq. regarding confidentiality agreement." (Final *Vaughn* Index Sub ID 18b; 19a). The released portions of the email demonstrate that the communication was exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is protected by Exemption 4.

Second, the District asserts that Documents 18c and 19b – which contain the same email – are appropriately redacted to preserve the deliberative process privilege. Specifically, the District describes the communication as "Internal email discussing potential confidentiality agreement." (Final *Vaughn* Index Sub ID 18c; 19b). The released portions of the emails establish that the communication was exclusively exchanged between attorneys from the OAG and District employees. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communication is predecisional and deliberative, and thus protected by Exemption 4.

[4] In its proposed order, MPC requests that the court order the District to reconsider the possibility of releasing portions of Document 18a. The District has already released the entirety of Document 18a, however, rendering that request moot.

Documents 20a and b

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes each document as an "Email reflecting attorney client communications with Thorn Pozen, Esq. regarding consultants from Jair Lynch Companies for McMillan." (Final *Vaughn* Index Sub ID 20a; 20b). The released portions of the emails demonstrate that the communications were exclusively exchanged between attorneys from the OAG and District employees. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are protected by Exemption 4.

Document 23b

Exemption is supported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege and deliberative process privilege under Exemption 4. Specifically, the District describes Document 23b as "Internal email reflecting attorney client communications with Michael Krainak, Esq. regarding sharing LDAs." (Final *Vaughn* Index Sub ID 23b). The released portions of the email demonstrate that the communication was exclusively exchanged between attorneys from the OAG and District employees. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is protected by Exemption 4.

Documents 24a, 24d, and 25b

Exemption is unsupported. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4.

Specifically, the District describes each document as an "Internal email providing information in order to obtain legal advice from Nancy Alper, Esq. regarding the McMillan project." (Final *Vaughn* Index Sub ID 24a; 24d; 25b). The attorney-client privilege protects confidences or secrets. D.C. Rule of Prof'l Conduct 1.6. The District does not relate the concept of confidentiality or secrecy to the documents' content by stating what portion is confidential or secret and why. This is a significant omission because the emails relate merely to the scheduling of a meeting. As a result, Documents 24a, 24d, and 25b shall be released in their entirety.

Document 27a

Exemption is unsupported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Internal email communications regarding funding recommendations for the McMillan project and analysis of financial information." (Final *Vaughn* Index Sub ID 27a). The unredacted portion of the communication establishes that it was sent between two District employees. The *Vaughn* Index entry is insufficient, however, to demonstrate how the redacted content , which merely concerns scheduling, is deliberative. As a result, Document 27a shall be released in its entirety.

Document 27b

Exemption is unsupported. The District asserts that the email is properly withheld as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. Further, the District describes the

document as "Email communications with developer discussing funding for the McMillan project and analysis of financial information." (Final *Vaughn* Index Sub ID 27b).

To establish the degree of harm that VMP would suffer should the email be released, the District relies exclusively on the September 2011 affidavit of Adam Weers. The overly broad and conclusory nature of this affidavit has been repeatedly referred to in this order. *See, supra*, pp. 13, 18.

Document 28a

Exemption is unsupported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Internal email communications regarding potential funding recommendations for the McMillan project." (Final *Vaughn* Index Sub ID 28a). The unredacted portion of the communication establishes that it was sent between two District employees. The *Vaughn* Index entry is insufficient, however, to demonstrate how the redacted content is deliberative. This omission is significant because the redacted content contains discussion of scheduling a meeting. As a result, Document 28a shall be released in its entirety.

Documents 29a, b, and c

Exemption is supported with respect to Documents 29a and b, but not 29c. The District asserts that all three documents are properly redacted to preserve the deliberative process privilege under Exemption 4. With respect to Document 29c, the District describes the document as "Internal email communications regarding funding sources for the DMPED projects." (Final *Vaughn* Index Sub ID 29c). The

unredacted portion of the communication establishes that it was sent between District employees. The *Vaughn* Index entry is insufficient to demonstrate how the redacted content is deliberative, however. The email was sent to all DMPED project managers and provides what is essentially factual information about potential funding sources. As a result, Document 29c shall be released in its entirety.

With respect to Documents 29a and b, the District asserts that these emails are appropriately redacted to preserve the deliberative process privilege. Specifically, the District describes the communications as "Internal email communications regarding funding sources for the McMillan project." (Final *Vaughn* Index Sub ID 29a; 29b). The released portions of the emails demonstrate that the communications were exclusively exchanged between District employees. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are predecisional and deliberative, and thus protected by Exemption 4.

Document 30

Exemption is supported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege. Specifically, the District describes the communication as "Internal email communications regarding potential funding recommendations for the McMillan project." (Final *Vaughn* Index Sub ID 29a; 29b). The released portions of the email establish that the communication was exclusively exchanged between District employees. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communication is predecisional and deliberative, and thus protected by Exemption 4.

Documents 31a and c

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the documents as "Email with attached spreadsheet reflecting attorney client communications regarding attorney support for projects" and "Email reflecting attorney client communications regarding attorney support for projects," respectively. (Final *Vaughn* Index Sub ID 31a; 31c). The released portions of the emails demonstrate that the communications were exclusively exchanged between District employees. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are predecisional and deliberative, and thus protected by Exemption 4.

Document 32

Exemption is unsupported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Email communications with consultants reflecting potential funding recommendations for the McMillan project." (Final *Vaughn* Index Sub ID 32). The unredacted portion of the communication establishes that it was sent to a District employee from an outside consultant, who the District attests falls within Exemption 4. (Abbasi Aff. ¶ 14, Nov. 26, 2012). The *Vaughn* Index entry is insufficient, however, to demonstrate how the redacted content is deliberative. For instance, the first several sentences discuss details about scheduling a meeting. As a result, Document 32 shall be released in its entirety.

Documents 33a, b, and c

Exemption is supported for all three documents. The District asserts that these documents are appropriately redacted to preserve the deliberative process privilege under Exemption 4.

As an initial matter, the documents originated from consultants who the District acknowledges are not District employees. Under the so-called "consultant corollary," communications by outside consultants may be included under Exemption 4 if the District sought outside advice, and the consultants effectively functioned as agency employees in providing their expertise. The District attests that consultants from Economics Research Associates ("ERA") were hired "for 'real estate and financial advisory services' regarding various aspects of the proposals of VMP," and that the consultants "provided comments solicited by DMPED on a number of issues." (Abbasi Aff. ¶ 14, Nov. 26, 2012). Therefore, the deliberate process privilege extends to the ERA consultants because their advice was sought by the District and the consultants provided information, much as would a District employee.

With respect to the content of the documents, the District describes them as containing "potential funding recommendations for the McMillan project." (Final *Vaughn* Index Sub ID 33a; 33b; 33c). The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are predecisional and deliberative, and thus protected by Exemption 4.

Document 35

Exemption is supported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Email communications with consultants reflecting potential funding recommendations for the McMillan project." (Final *Vaughn* Index Sub ID 35). The released portions of the email establish that the communication was exclusively exchanged between a District employee and outside consultants properly included under the consultant corollary. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is predecisional and deliberative, and thus protected by Exemption 4.

Documents 36d and 37c

Exemption is supported. These documents include an identical email that the District asserts is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Email communications with consultants discussing attached draft map and reflecting potential funding recommendations for the McMillan project." (Final *Vaughn* Index Sub ID 36d; 37c). The released portions of the email demonstrate that the communication was exclusively exchanged between a District employee and outside consultants who fall under the consultant corollary. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication was predecisional and deliberative, and thus protected by Exemption 4.

Documents 42a and c

Exemption is unsupported. The District asserts that these emails are appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes these documents as "Email communications with consultants reflecting project analysis for the McMillan project," and "Email communications with consultants documents needed for project analysis for DMPED projects," respectively. (Final *Vaughn* Index Sub ID 42a; 42c). The released portions of the emails demonstrate that the communications were exclusively exchanged between a District employee and outside consultants who fall under the consultant corollary. The District's assertion of privilege is overbroad, however, because the District has failed to produce reasonably separable content that is not deliberative. For instance, Document 42a is entirely innocuous, as it concerns only scheduling matters after receipt of "the other two developers' fiscal impact calculations." Document 42c is similarly innocuous. These documents are not properly included under Exemption 4 and shall be released in their entirety.

Document 43c

Document 43c contains the same email as Document 42c. The District shall therefore release Document 43c in its entirety for the reasons provided immediately above.

Document 54

Exemption is unsupported. The District asserts the deliberative process privilege for this document, which is an email from Clinton Jackson to other governmental personnel. The document lists current activities, future milestones,

and an outstanding issue with respect to the McMillan Park redevelopment project. The same sort of list is presented with respect to "5th and I." The document seems mostly factual and consists entirely of bullet points.

In its August 16, 2012, Order, the court identified the District's substantiation for its decision to withhold Document 54 as insufficient because "[t]he District offers no explanation of what portion of this document 'makes recommendations or expresses opinions on legal or policy matters' or is otherwise included in the deliberative process privilege, and there is no discussion of segregability." Order 9, Aug. 16, 2012). The District has persisted in redacting the bulleted lists without establishing how they are deliberative. As a result, the District shall release Document 54 in its entirety.

Documents 55 a-c

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes each document as "Email seeking legal advice of Pamela Perry, Esq. and Michael Krainak, Esq. regarding consultants from Jair Lynch Companies for McMillan." (Final *Vaughn* Index Sub ID 55a; 55b; 55c). The released portions of the emails demonstrate that the communications were exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are protected by Exemption 4.

Document 56a

The District has thus far released only a redacted version of this document without providing an authority or basis for the redaction. As a result, the District shall release the entirety of Document 56a.

Documents 56b-d

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes the documents as emails with an attachment "regarding agreements related to McMillan LDA." (Final *Vaughn* Index Sub ID 56b; 56c; 56d). The released portions of the emails demonstrate that the communications were exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are protected by Exemption 4.

Document 57

Exemption is supported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes the document as "Email seeking legal advice of Pamela Perry, Esq. and Michael Krainak, Esq. regarding consultants from Jair Lynch Companies for McMillan." (Final *Vaughn* Index Sub ID 57). The released portions of the email demonstrate that the communication was exclusively exchanged between attorneys from the OAG and a District employee. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is protected by Exemption 4.

Document 59a

Exemption is supported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Internal email communication regarding proposed plans for the McMillan project site." (Final *Vaughn* Index Sub ID 59a). The released portions of the emails demonstrate that the communications were exclusively exchanged between District employees. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications are predecisional and deliberative, and thus protected by Exemption 4.

Document 60

Exemption is supported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes the document as "Email seeking legal advice of Pamela Perry, Esq. regarding LDA negotiations with the McMillan development team." (Final *Vaughn* Index Sub ID 60). The released portions of the email establish that the communication was exclusively exchanged between an attorney from the OAG and District employees. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is protected by Exemption 4.

Document 61a

Exemption is unsupported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes the document as an "Internal email seeking legal advice of Emily Morris, Esq. And Paul Mathis, Esq. regarding draft terms of McMillan Term Sheet."

(Final *Vaughn* Index Sub ID 61a). The attorney-client privilege protects confidences or secrets. D.C. Rule of Prof'l Conduct 1.6. The District does not relate the concept of confidentiality or secrecy to the document's content by stating what portion is confidential or secret and why. This is a significant omission because the email merely relates that the sender has reviewed a term sheet and has questions and comments about it. As a result, Document 61a shall be released in its entirety.

Document 62d

Exemption is unsupported. The District asserts that this email is appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes the document as an "Internal email providing information in order to obtain legal advice of Emily Morris, Esq. regarding draft terms of McMillan Term Sheet." (Final *Vaughn* Index Sub ID 62d). As with Document 61a, the District does not relate the concept of confidentiality or secrecy to Document 62d's content by stating what portion is confidential or secret and why. This is a significant omission because the email relates general topics for which the sender is seeking an update from an attorney at OAG. As a result, Document 62d shall be released in its entirety.

Document 64a

Exemption is supported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Internal email communications reflecting recommendations for development projects near the McMillan site." (Final *Vaughn* Index Sub ID 64a). The released portions of the email demonstrate that the communication was exclusively exchanged between District employees.

The *Vaughn* Index and unredacted portions of the email adequately establish that the communications are predecisional and deliberative, and thus protected by Exemption 4.

Document 65d and 66

Exemption is supported. These documents contain an identical email, which the District asserts is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes these documents as "Email communications reflecting proposed McMillan community outreach policies." (Final *Vaughn* Index Sub ID 65d; 66). The released portions of the email show that the communication was exclusively exchanged between District employees. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication was predecisional and deliberative, and protected by Exemption 4.

Document 67

Exemption is supported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Email communications reflecting McMillan master planning." (Final *Vaughn* Index Sub ID 67). The released portions of the email demonstrate that the communication was exclusively exchanged between District employees. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication was predecisional and deliberative, and thus protected by Exemption 4.

Documents 68g, h, and i

Exemption is unsupported with respect to each document. The District asserts that these emails are appropriately redacted to preserve attorney-client privilege under Exemption 4. Specifically, the District describes each document as "Email seeking legal advice of Emily Morris, Esq. regarding the McMillan Term Sheet." (Final *Vaughn* Index Sub ID 68g; 68h; 68i). The attorney-client privilege protects confidences or secrets. D.C. Rule of Prof'l Conduct 1.6. The District does not relate the concept of confidentiality or secrecy to the document's content by stating what portion is confidential or secret and why. This is a significant omission because Documents 68g and 68h contain logistical information for scheduling meetings, and Document 68i includes general bullet points to be addressed at a meeting. As a result, Documents 68g, h, and i shall be released in their entirety.

Documents 72a-c

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the documents as "Email communications reflecting advisory support services for McMillan project and availability of funds." (Final *Vaughn* Index Sub ID 72a; 72b; 72c). The released portions of the emails show that the communications were exclusively exchanged between District employees in various agencies. The *Vaughn* Index and unredacted

portions of the emails adequately establish that the communications are predecisional and deliberative, and protected by Exemption 4.[5]

Document 73a

Exemption is supported. The District asserts that this email is appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the document as "Email communications with attached draft document discussing statement of work for real estate advisory support for McMillan project." (Final *Vaughn* Index Sub ID 73a). The released portions of the email demonstrate that the communication was exclusively exchanged between District employees in various agencies. The *Vaughn* Index and unredacted portions of the email adequately establish that the communication is predecisional and deliberative, and protected by Exemption 4.

Documents 76b and 77a

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the documents as "Internal email communication reflecting unresolved issues to be discussed at upcoming meeting regarding the McMillan project." (Final *Vaughn* Index Sub ID 76b; 77a). The released portions of the emails show that the communications were exclusively exchanged between District employees in various agencies. The *Vaughn* Index and

[5] MPC also seeks release of Document 72d. The District represents in its Final *Vaughn* Index that Document 72d has already been released. Therefore, MPC's request is moot with respect to this document.

unredacted portions of the emails adequately establish that the communications are predecisional and deliberative, and protected by Exemption 4.

Documents 78 and 79

Exemption is supported. The District asserts that these emails are appropriately redacted to preserve the deliberative process privilege under Exemption 4. Specifically, the District describes the documents as "Internal email communications reflecting recommendations for development team selection for the McMillan project." (Final *Vaughn* Index Sub ID 78; 79). The released portions of the emails show that the communications were exclusively exchanged between District employees in various agencies. The *Vaughn* Index and unredacted portions of the emails adequately establish that the communications were predecisional and deliberative, and thus protected by Exemption 4.

Document 81

Exemption is unsupported. The District asserts that the email is properly redacted as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. Further, the District describes the document as "Email communication from development team reflecting their proposed internal team structure and related costs for the McMillan project." (Final *Vaughn* Index Sub ID 81).

To establish the degree of harm that VMP would suffer should the email be released, the District relies exclusively on the September 2011 affidavit of Adam

Weers, the infirmities of which have repeatedly been referred to. *See, e.g.,* pp. 13, 18. Consequently, Document 81 shall be released in its entirety.

Documents 82-93

In its proposed order, MPC requests that the court order the District to release documents 82-93. In its Final *Vaughn* Index, the District indicates that the following documents have already been released: 84b, 86a, 86c, 89a, 91a, 93b, 93c, 93d, 93e, and 93f. As a result, MPC's request is moot with respect to these documents.

Exemption is unsupported with respect to the remaining documents in this range. The District asserts that multiple documents between Index numbers 82 and 93 are properly withheld as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm and the following documents shall be released in their entirety: 82, 83, 84a, 85, 86b, 87a, 87b, 88a, 88b, 88c, 89b, 90a, 90b, 91b, 91c, 92a, 92b, 93a, 93g, and 93h.

Documents 95-102

In its proposed order, MPC requests that the court order the District to release documents 95-102. In its Final *Vaughn* Index, the District indicates that documents 95a-d; 96a-c; 97a-b; 98a; 99a; and 101b have already been released. As a result, MPC's request is moot with respect to these documents.

Exemption is unsupported with respect to remaining documents in this range. The District asserts that multiple documents between Index numbers 95 and 102 are

properly withheld as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm and the following documents shall be released in their entirety: 95e, 95f, 96d, 96e, 97c, 97d, 98b, 98c, 99b, 99c, 100a, 100c, 101a, and 102.

Documents 106-131

In its proposed order, MPC requests that the court order the District to release documents 106-131. In its Final *Vaughn* Index, the District indicates that the following documents have already been released: 108a-e; 109 a-d and f; 110a; 111a-c and e; 112a-b and d; 114a-b; 115a; 118a and e; 119d; 120a and f; 121e; 122d; 123c; 124d; 125c; 126b; 127a-b; 128a; 130a-e; 131a. As a result, MPC's request is moot with respect to these documents.

Exemption is unsupported with respect to remaining documents in this range. The District asserts that multiple documents between Index numbers 106 and 131 are properly withheld as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm if these remaining documents are released.

The court provides additional analysis with respect to Document 130f, which the District describes as "Report received from development team regarding predevelopment feasibility studies for the McMillan project." (Final Vaughn Index Sub ID 130f). Despite the District's contention that Document 130f contains nonsegregable commercial and financial information, a review of the first several pages reveals the overbreadth of that argument. To illustrate, pages 1-4 are schematic depictions of the existing site, and at least the first two pages of the subsequent memorandum describes the existing water and sewer systems. Nowhere in the Weers Affidavit or the *Vaughn* Index does the District address with sufficient specificity what substantial harm VMP will suffer if such information is released to MPC.

For the reasons provided above, the following documents shall be released in their entirety: 106a, 106b, 107, 108f, 109e, 111d, 112c, 113a, 114c, 115b, 116, 117a, 118b, 118c, 118d, 119a, 119b, 119c, 120b, 120c, 120d, 120e, 121a, 121b, 121c, 121d, 122a, 122b, 122c, 123a, 123b, 124a, 124b, 124c, 125a, 125b, 126a, 127c, 128b, 129a, and 130f.

Documents 133-168

In its proposed order, MPC requests that the court order the District to release documents 133 to 168. In its Final *Vaughn* Index, the District indicates that the following documents have already been released: 133a-d, g, and i-k; 134a-c, f, h-j, and l; 135a-b, e, and g-i; 136a, d, and f-h; 137c and e-g; 138c and e-g; 139c and e-g; 140b and d-f; 143a and c; 144b; 145a; 147a; 148b-g; 149; 150a; 154a-b; 156b-c; 159a-

b; 160a; 162a; 165b, f-g; 166a, e-f; 167d-e; and 168c-d. As a result, MPC's request is moot with respect to these documents.

Exemption is unsupported with respect to remaining documents in this range. The District asserts that multiple documents between Index numbers 133 and 168 are properly withheld as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm and the following documents shall be released in their entirety: 133e; 133f; 133h; 133l; 134d; 134e; 134g; 134k; 135c; 135d; 135f; 135j; 136b; 136c; 136e; 136i; 137a; 137b; 137d; 137h; 138a; 138b; 138d; 138h; 139a; 139b; 139d; 139h; 140c; 140c; 140g; 141; 142a; 143b; 143d; 144a; 144c; 145b; 146a; 147b; 148a; 150b; 151a; 151b; 152a; 152b; 153a; 153b; 154c; 155; 156a; 157a; 158; 159c; 160b; 161a; 161b; 162b; 162c; 163a; 163b; 164; 165a; 165c; 165d; 165e; 165h; 165i; 166b; 166c; 166d; 166g; 166h; 167a; 167b; 167c; 167f(i);[6] 167f(ii); 168a; 168b; 168e; and 168f.

Documents 170d, 171c, and 172b

The District does not provide in its Final *Vaughn* Index a citation to an applicable exemption to support the District's decision to redact portions of these documents. As a result, the District shall release Documents 170d, 171c, and 172b in their entirety.

[6] MPC labels two separate entries in its version of the Final *Vaughn* Index with the Sub ID "167f." For the sake of clarity, the court refers to the email received 7/9/2008 at 6:11 PM as "167f(i)," and the email received 7/16/2008 at 12:20 PM as "167f(ii)."

Documents 174-180

In its proposed order, MPC requests that the court order the District to release documents 174 to 180. In its Final *Vaughn* Index, the District indicates that Documents 174a, 176a, 179a, and 179c have already been released. As a result, MPC's request is moot with respect to these documents.

Exemption is unsupported with respect to remaining documents in this range. The District asserts that multiple documents between Index numbers 174 and 180 are properly withheld as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm and the following documents shall be released in their entirety: 174b, 175a, 175b, 176b, 176c, 177b, 177a, 178a, 178b, 179b, 179d, and 180.

Documents 183-186

In its proposed order, MPC requests that the court order the District to release documents 183 to 186. In its Final *Vaughn* Index, the District indicates that Documents 183a and 185a have already been released. As a result, MPC's request is moot with respect to these documents.

Exemption is unsupported with respect to remaining documents in this range. The District asserts that multiple documents between Index numbers 183 and 186 are properly withheld as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person

from whom the information was obtained," under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm and the following documents shall be released in their entirety: 183b, 184, 185b, and 186.

Documents 189-190

In its proposed order, MPC requests that the court order the District to release documents 189-190. In its Final *Vaughn* Index, the District indicates that Document 189a has already been released. As a result, MPC's request is moot with respect to this document.

Exemption is unsupported with respect to Documents 189b and 190. The District asserts that these documents, which contain the same email, are properly redacted as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained" under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm and Documents 189b and 190 shall be released in their entirety.

Documents 195a-c

In its proposed order, MPC requests that the court order the District to release Document 195, which actually consists of four separate emails. In its Final *Vaughn* Index, the District indicates that Documents 195a-c have already been released. As a result, MPC's request is moot with respect to these documents.

Document 195d

Exemption is unsupported. The District asserts that the email is properly redacted as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm and Document 195d shall be released in its entirety.

Documents 200 to 205

In its proposed order, MPC requests that the court order the District to release Documents 200-205. In its Final *Vaughn* Index, the District indicates that Documents 200a, 201a, and 202a-b have already been released. As a result, MPC's request is moot with respect to these documents.

Exemption is unsupported with respect to remaining documents in this range. The District asserts that these documents are properly redacted as "commercial or financial information . . . [the disclosure of which] would result in substantial harm to the competitive position of the person from whom the information was obtained," under Exemption 1. For the same reasons expressed above with respect to Document 81, the District has failed to meet its burden of establishing that VMP will suffer substantial competitive harm and the following Documents shall be released in their entirety: 200b, 201b, 202c, 203a, 203b, 203c, 204a, 204b, and 205.

ACCORDINGLY, it is this 5th day of August 2013,

ORDERED, that "Plaintiff McMillan Park Committee's Motion for Summary Judgment," filed on December 16, 2010, is GRANTED IN PART. It is further

ORDERED, that Plaintiff's request that the District be ordered to release documents is DENIED with respect to the following documents: 3a, 4a, 4b, 5a, 5b, 5c, 6a, 6b, 8a, 8b, 8d, 9a, 9b, 9d, 14a, 17a, 17b, 18b, 18c, 19a, 19b, 20a, 20b, 23b, 29a, 29b, 30, 31a, 31c, 33a, 33b, 33c, 35, 36d, 37c, 55a, 55b, 55c, 56b, 56c, 56d, 57, 59a, 60, 64a, 65d, 66, 67, 72a, 72b, 72c, 73a, 76b, 77a, 78, and 79. It is further

ORDERED, that Plaintiff's request that the District be ordered to release documents is DENIED AS MOOT with respect to the following documents: 72d, 84b, 86a, 86c, 89a, 91a, 93b, 93c, 93d, 93e, 93f, 95a, 95b, 95c, 95d, 96a, 96b, 96c, 97a, 97b, 98a, 99a, 101b, 108a, 108b, 108c, 108d, 108e, 109a, 109b, 109c, 109d, 109f, 110a, 111a, 111b, 111c, 111e, 112a, 112b, 112d, 114a, 114b, 115a, 118a, 118e, 119d, 120a, 120f, 121e, 122d, 123c, 124d, 125c, 126b, 127a, 127b, 128a, 130a, 130b, 130c, 130d, 130e, 131a, 133a, 133b, 133c, 133d, 133g, 133i, 133j, 133k, 134a, 134b, 134c, 134f, 134h, 134i, 134j, 134l, 135a, 135b, 135e, 135g, 135h, 135i, 136a, 136d, 136f, 136g, 136h, 137c, 137e, 137f, 137g, 138c, 138e, 138f, 138g, 139c, 139e, 139f, 139g, 140b, 140d, 140e, 140f, 143a, 143c, 144b, 145a, 147a, 148b, 148c, 148d, 148e, 148f, 148g, 149, 150a, 154a, 154b, 156b, 156c, 159a, 159b, 160a, 162a, 165b, 165f, 165g, 166a, 166e, 166f, 167d, 167e, 168c, 168d, 174a, 176a, 179a, 179c, 183a, 185a, 189a, 195a, 195b, 195c, 200a, 201a, 202a, and 202b. It is further

ORDERED, that the District shall have until September 6, 2013 to release the following documents in their entirety: 1b, 7a, 7c, 10b, 14c, 24a, 24d, 25b, 27a, 27b,

28a, 29c, 32, 42a, 42c, 43c, 54, 56a, 61a, 62d, 68g, 68h, 68i, 81, 82, 83, 84a, 85, 86b, 87a, 87b, 88a, 88b, 88c, 89b, 90a, 90b, 91b, 91c, 92a, 92b, 93a, 93g, 93h, 95e, 95f, 96d, 96e, 97c, 97d, 98b, 98c, 99b, 99c, 100a, 100c, 101a, 102, 106a, 106b, 107, 108f, 109e, 110b, 111d, 112c, 113a, 113c, 114c, 115b, 116, 117a, 117b, 118b, 118c, 118d, 119a, 119b, 119c, 120b, 120c, 120d, 120e, 121a, 121b, 121c, 121d, 122a, 122b, 122c, 123a, 123b, 124a, 124b, 124c, 125a, 125b, 126a, 127c, 128b, 129a, 129b, 130f, 131b, 133e, 133f, 133h, 133l, 134d, 134e, 134g, 134k, 135c, 135d, 135f, 135j, 136b, 136c, 136e, 136i, 137a, 137b, 137d, 137h, 138a, 138b, 138d, 138h, 139a, 139b, 139d, 139h, 140a, 140c, 140g, 141, 142a, 142b, 143b, 143d, 144a, 144c, 145b, 146a, 146b, 147b, 147c, 148a, 150b, 150c, 151a, 151b, 152a, 152b, 153a, 153b, 154c, 155, 156a, 157a, 157b, 158, 159c, 160b, 161a, 161b, 162b, 162c, 163a, 163b, 164, 165a, 165c, 165d, 165e, 165h, 165i, 166b, 166c, 166d, 166g, 166h, 167a, 167b, 167c, 167f(i), 167f(ii), 168a, 168b, 168e, 168f, 170d, 171c, 172b, 174b, 175a, 175b, 176b, 176c, 177a, 177b, 178a, 178b, 179b, 179d, 180, 183b, 184, 185b, 186, 189b, 190, 195d, 200b, 200c, 201b, 202c, 203a, 203b, 203c, 204a, 204b, and 205. It is further

ORDERED, that this case is CLOSED.

Judge Judith N. Macaluso

(Signed in Chambers)

Copies to:

Margot Pollans
Hope Babcock
Andrew Saindon
Melissa Baker
Grace Graham