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January 23, 2026

**VIA ELECTRONIC MAIL ONLY**

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Re: Supplement to Application Resubmittal for 555 West Middlefield Rd.

Dear Sam, Diana and Amber:

On behalf of AvalonBay Communities (“AvalonBay”), we are providing an updated letter to supplement the resubmission of the application concurrently being submitted for the proposal to add 323 units, 48 of which are affordable, at 555 West Middlefield Road (“Proposed Project”). As set forth below, the Proposed Project qualifies for certain protections under state law, including under the Housing Accountability Act, vested rights afforded by the SB 330 Preliminary Application submitted on December 19, 2024, limited parking requirements under SB 2097 and certain benefits, including waivers and concessions, under State Density Bonus Law (“SDBL”). We also reserve the right to update and/or amend these requests in the future as the application process continues.

**I. Background on Project**

555 West Middlefield Road is currently developed with 404 residential units<sup>1</sup> that were originally developed in the late 1960s. Recognizing that the outdated surface parking lots provide an opportunity to increase density on the site without displacing residents, AvalonBay first submitted an application in 2015 to add 323 units to the site. That application required amendments to the General Plan, so it went through the City’s Gatekeeper process. The City also prepared a full Environmental Impact Report (“EIR”) under the California Environmental Quality Act (“CEQA”). After years of processing and community engagement, the City Council approved the project in 2022, including approval of a General Plan amendment designating the

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<sup>1</sup> The existing development had 402 units at the time of the prior approval, but two ADUs have since been permitted and constructed on the property by converting storage rooms into residential units.

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site High Low-Density Residential, a Planned Community Permit, a Development Review Permit, a Heritage Tree Removal Permit and a Vesting Tentative Map (“Approved Project”).

Due to the significant cost associated with underground parking, the Approved Project is no longer financially feasible. The current application is for a substantially similar development as the Approved Project except that it is reconfigured to build the parking garages above-grade and wrap residential units around them so they are hidden from public view. The Proposed Project includes the same number of new units, including affordable units, and largely continues the design of the Approved Project.

In order to take advantage of certain changes in the law, AvalonBay submitted this as a new application, rather than as an amendment to the existing project. AvalonBay submitted an SB 330 Preliminary Application on December 19, 2024, and the formal application on April 4, 2025. At this point, AvalonBay has not withdrawn its currently approved project.

## **II. SB 330 Preliminary Application**

SB 330 created a new option for applicants of qualifying “housing development projects,” generally meaning projects that are at least two-thirds residential, to submit a “Preliminary Application.” A Preliminary Application is separate and distinct from, and does not require as much detail as a traditional development application. SB 330 precludes local agency input into the required contents of a Preliminary Application.

The key benefit of a Preliminary Application is that it provides early vested rights, including to impact fees, on the date that it is submitted. Unlike a traditional application, there is no completeness process, and the vested rights accrue on the date that a Preliminary Application is submitted that contains the information required by the statute; no action by the City is required. The only obligation is that an applicant submit a formal application within 180 days, a deadline which was previously met.

## **III. Housing Accountability Act Protections**

The Proposed Project is also protected by the Housing Accountability Act (“HAA”), a housing production statute that seeks “to significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects.” (§ 65589.5(a)(2)(K)).<sup>2</sup> The HAA expresses the state’s policy that this statute “be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” (§ 65589.5(a)(2)(L)).

Subsection (j) is of particular importance for projects that comply with applicable, objective General Plan, zoning and subdivision standards. In particular, a city can only disapprove, or

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<sup>2</sup> Unless otherwise stated, citations are to the Government Code.

reduce the density, of such a project upon finding that there would be a “specific, adverse impact upon the public health or safety” and there is no feasible method to mitigate the impact. (§ 65589.5(j)). The receipt of a density bonus, concession or waiver under the State Density Bonus Law is not a valid basis for finding that a project is inconsistent with an applicable development standard. (§ 65589.5(f)(3)). When assessing consistency with objective standards, the statute directs that the project complies if “substantial evidence...would allow a reasonable person to conclude” that the project complies. (§ 65589.5(f)(4)). Courts have narrowly defined what constitutes an objective standard, finding that if there is room for subjective judgment, it is not objective and cannot be the basis to deny a project. *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820.

#### **IV. State Density Bonus Law**

The SDBL applies to housing development projects that provide on-site affordable housing and provides for not only increased residential density over the maximum density otherwise allowed, but also an unlimited number of waivers and a certain number of concessions, among other benefits. Here, in compliance with the City’s Below Market Rate Housing Program, the Proposed Project includes 48 low income units, at least 17 of which will be very low income units.

The Project site is designated “High-Low Density” under the General Plan, which allows up to 50 units an acre, which would allow a total of 726 units based on the Project site’s size of 14.52 acres. Although the site currently contains 404 units, according to HCD, the two ADUs that have been added do not count for base density purposes.<sup>3</sup> Therefore, we assume that there are 402 existing units, meaning that there is capacity under the General Plan for 324 units, and that number is the “base density” for density bonus purposes.<sup>4</sup> Because the Project includes

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<sup>3</sup> California Department of Housing and Community Development, *Accessory Dwelling Unit Handbook*, (January 2025), at 44 (noting that a density bonus is calculated based on the number of units allowed by the zoning or General Plan, excluding any ADUs that could be permitted).

<sup>4</sup> One of the City comments suggested that the “base density” includes the existing units, so the SDBL affordable requirement must be a percentage of the 726 units that will be on the site. That is incorrect. The “project” for purposes of SDBL is only the 323 units; because there are no changes to the existing units (other than cosmetic), they are not included when determining the required number of affordable units. This has been confirmed by HCD. In a Technical Assistance letter, HCD has determined that when the existing units are “independent” of the new units, both physically and legally, then only the new units are considered when determining the affordable percentage. HCD distinguished that from the situation where the existing units are physically modified in a material manner (such as adding bedrooms or consolidating units), or if existing units are deed restricted as part of the proposal. (Letter from Shannan West, HCD to Jose Dorado, Housing Manager, City of El Cajon, *RE: 145 W Renette Avenue, City of El*

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more than 10% of the “base” units at the low income level, the Proposed Project qualifies for several SDBL benefits, including at least a 20% bonus (§ 65915(f)(1)), one concession (§ 65915(d)(2)), an unlimited number of waivers (§ 65915(e)(1)), and certain vehicular parking ratios (§ 65915(p)). The Proposed Project includes 323 units, which is less than the base density, so no bonus is requested.

A. Waivers

i. *Legal Standard for Waivers*

Applicants may request a waiver of any development standard that would have the effect of physically precluding the construction of a housing project at the density or with the concessions permitted by the SDBL. There is no limit to the number of waivers that may be requested.

The scope of waivers has been broadly interpreted by the courts to mean that the waiver must be granted if it would otherwise physically preclude the project “as designed.” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755; *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329.) That is, the “physically preclude” question is not whether a project could be designed to comply with the standard proposed to be waived, but rather whether the project as designed would otherwise be physically precluded by the standard. There is also no financial feasibility test nor a need to justify the waivers.

The grounds for denial of waivers are limited to circumstances where (i) the waiver would have a specific, adverse impact on health or safety and there is no feasible way to mitigate or avoid the specific adverse impact; (ii) the waiver would have an adverse impact on any real property listed in the California Register of Historical Resources; or (iii) the waiver would be contrary to state or federal law. (Gov. Code, § 65915(e)(1).)

ii. *Applicable Development Standards*

The first step is to determine the development standards that apply to the Project. Given the Planned Community (PC) zoning designation, which is a flexible zoning district intended to allow for more creative and innovative developments (MVMC § 36.50.35.), there are very few development standards that are applicable to the Project, if any.

The PC District itself does not have any development standards, other than the minimum 2 acre size limit. Instead, PC District development standards are found in an adopted Precise Plan, contained as conditions of approval in a PC Permit, or specified at the time of rezoning to or amendment of the PC District. (MVMC §§ 36.50.35, 36.22.20.) Here, there is no Precise Plan and the PC District was established prior to, and was not amended for, the Approved Project.

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*Cajon* (February 16, 2023), available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/el-cajon-rezone-loi-070824.pdf>.) Here, the new project and the existing units are “independent,” so the City must look only to the new units.

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Further, while the conditions of approval set out various requirements for project construction and operation, none of them include development standards. For that reason, aside from the density in the General Plan and any Citywide development standards, there are no development standards for this PC District. It follows that no waivers are required.

This interpretation matches that of Planning Staff. When considering whether to include 555 W. Middlefield Road in the updated Moffett Boulevard Precise Plan, the November 19, 2024 Study Session Memo describes the zoning for 555 W. Middlefield Road as follows:

*The current zoning designation does not include development standards or easily accessible administrative procedures because development projects are approved as proposed, and procedures to make subsequent modifications to such developments do not have standards to guide review. The Precise Plan could provide additional clarity regarding the standards and procedures that would apply to the site.*

(Study Session Memo, at 13.) That is, one of the considerations Staff suggested as a rationale for adding the property to the Precise Plan was to add development standards, since there are none currently.

However, we understand that the City's view is that there are development standards applicable to the Project. While the source of development standards are unclear, Sheet AP0.12 compares the project to two sources: (1) dimensions of the Approved Project and (2) the "referenced" development standards in the R(4) zoning district which were looked to when processing the Approved Project (although they were never adopted). While we disagree that either source imposes development standards, Sheet AP0.12 highlights that the Proposed Project is substantially similar to the Approved Project and generally complies with the R(4) development standards, although there are some deviations.

*iii. Density Bonus Waivers Requested, If Necessary*

Without waiving our position that there are no development standards, if the City insists that the Approved Project established such standards, we request the following density bonus waivers. Please note that while the table below explains some of the design choices, State Density Bonus Law does not require any rationale or justification for a waiver. The only requirement is that the waiver meets the legal tests described above.

- FAR: By pulling the parking above ground and putting it in structures, the above ground floor area increased, resulting in an increase in FAR. The Approved Project's FAR is 1.13, the FAR in R(4) is 1.95 and the Proposed Project is at 1.51. The need to increase the FAR was caused by the additional massing associated with the above ground parking, while generally maintaining the unit count, size and type. To the extent the

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Approved Project's FAR is a development standard, that standard would physically preclude the Proposed Project as designed. If necessary, a waiver is requested.<sup>5</sup>

- **Setbacks:** The Proposed Project is closer to the various streets and rear/side yards compared to the Approved Project, although it still mostly complies within the R4 setback limits other than a few minor deviations shown on Sheet AP0.12. The additional massing caused by bringing the parking above ground was partly accommodated by height increases, particularly at Building A, but building footprints were also increased by pushing the buildings closer to the streets and internal property lines. To the extent the Approved Project established setbacks, that standard would physically preclude the Proposed Project as designed. If necessary, a waiver is requested.
- **Heights:** Building heights in Buildings B and C are substantially similar between the two projects, although Building C increased by approximately 8'-8". The main difference between the projects is that Building A has increased from one story to four stories, resulting in a wall height increase from 26'-6" to 49'. The R(4) height limits of 62' to the ridge and 52' wall height are slightly exceeded by Building C, which has a ridge height of 62'-5" and wall height of 54'-10". The primary reason for the increased height is that the above-grade parking garage is now occupying the interior space of the building footprint, and in order to reach the unit total, the building needed to be one additional story taller. To the extent the Approved Project or the R(4) district established height limits, such limits would physically preclude the Proposed Project as designed. If necessary, a waiver is requested.<sup>6</sup>
- **Open Area:** Compared to the Approved Project, the Proposed Project includes less open area, a reduction from 266,268 sq. ft. to 218,240 sq. ft. This reduction in open area compared to the Approved Project is due to larger building footprints required to accommodate the increased massing due to shifting the parking above ground. Overall, the Proposed Project open area is approximately 38%, which continues to exceed the minimum 30% open area required in the R(4) district. If the City views the open area provided in the Approved Project to be a development standard, such standard would

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<sup>5</sup> We also note that the recently signed SB 79 will impact the development standards applicable to the Project site, including FAR. Under SB 79, sites proximate to certain, high quality transit stops will be subject to increased height, FAR, and density limits. The Project site is located greater than 1/4 mile but less than 1/2 mile from the Mountain View Caltrain stop, which the bill characterizes as a "Tier 1 transit-oriented development stop." As a result, the FAR on the site will be 3.0, in which case no waiver would be required. However, SB 79 does not apply to local agencies until July 1, 2026. While the standards are not currently effective, we note this because they will be effective at the time the Project moves forward with building permits and construction.

<sup>6</sup> SB 79 will increase height to 65 feet, so no waiver would be required once that height limit is in effect.

physically preclude the Proposed Project as designed. If necessary, a waiver is requested.

- **Personal Storage:** The Approved Project included 80 sq. ft. per unit of enclosed storage, for a total of 51,140 sq. ft. of storage, which complied with the minimum amount required by the R(4) district. The Proposed Project reduces this to 2,138 sq. ft. of enclosed storage. With the increased bulk taken up by above ground parking, the Proposed Project sought to minimize other space to minimize the overall massing, including by reducing the amount of personal storage. If the City believes that the 80 sq. ft. per unit standard applies to the Proposed Project, application of it would physically preclude the Proposed Project as designed, so would qualify for a waiver.
- **Bike Parking:** The Approved Project included 482 secure bike parking spaces and 35 guest bike parking spaces, which was in excess of the City's standard bike parking requirements of 1 secure space per unit and 1 guest space per 10 units. The Proposed Project reduces the secure bike parking to 182 spaces and maintains consistency with the guest bike parking requirement with 34 spaces. As with the personal storage, the Proposed Project accommodates the above ground parking by reducing other above ground space, including secure bike parking. Because the 1 space per unit bike storage requirement would physically preclude the Proposed Project, it qualifies for a waiver.

#### B. Reservation of Rights Regarding Waivers and Concessions

Given the prior analysis, we do not believe that any relief from development standards is needed; however, if the City identifies inconsistencies with any of the above objective standards or any other objective standards, we reserve the right to request waivers or a concession, as appropriate.

#### V. No Parking Requirements Due to Proximity to Transit

Under AB 2097 (2022), projects within one-half mile of a "major transit stop" shall not be subject to any minimum parking requirement. (§ 65863.2). The City has since codified this state law in Section 36.32.50.b of its Municipal Code, which was recently updated again on December 10, 2024. The Proposed Project sits less than one-half mile of the Mountain View Transit Center, which meets the "major transit stop" definition, so there are no applicable minimum parking requirements.

Instead of meeting minimum requirements, the parking provided is based on AvalonBay's assessment of market demands. Parking has also been "right sized" as part of the effort to save costs, which has resulted in a reduction in parking from the 926 stall in the Approved Project to 855 in the Proposed Project.

#### VI. The Project Site is Protected as a Housing Element Site

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Finally, we note that the City identified the Approved Project as a “pipeline project” in its Housing Element for 323 units, which affords it additional layers of legal protection, such as “no net loss” rule implications and general compliance with the City’s Housing Element commitments.

**VII. CEQA Compliance**

In our prior letter dated October 21, 2025, we requested that the City process the application through the new statutory exemption for in-fill housing enacted through AB 130 and we submitted a short matrix explaining how the Proposed Project meets the AB 130 criteria. We understand that the AB 130 exemption is currently in process.

\* \* \* \*

Thank you for your consideration of the above analysis. I look forward to working with the City as we move this iteration of the project forward. We hope that the process can be done expeditiously and this version will result in construction moving forward quickly.

Very truly yours,



Miles Imwalle