

December 15, 2023, revised November 15, 2024

Via Electronic Submittal

Joel Paulson
Community Development Director
Town of Los Gatos
110 E. Main St.
Los Gatos, CA 95030

RE: New Townhome-Style Condominium Community by SummerHill Homes
50 Los Gatos-Saratoga Road

Dear Mr. Paulson,

SummerHill Homes LLC respectfully submits this Letter of Justification in support of SummerHill's development application for a new townhome-style condominium community at 50 Los Gatos-Saratoga Road.

Project Summary

SummerHill Homes proposes to redevelop a portion of an approximately 8.82-acre site at 50 Los Gatos-Saratoga Road in Los Gatos with a new 155-unit townhome-style condominium community. The project will offer a variety of two-, three- and four-bedroom home plans, with an average living area of approximately 1,823 square feet.¹ All of the homes will have private decks or front patios. In addition, the project will feature approximately 17,700 square feet of community recreation space. For further details, please refer to the Project Description included with SummerHill's development application.

Project Objectives

SummerHill's primary objectives for the project are the following:

- Develop 155 new for-sale homes, with delivery to homebuyers beginning by 2027.
- Develop three-story townhome-style condominiums to meet the demand for ownership housing with individual attached garages and individual private building entries.

¹ The square footages are calculated based on measuring to the outside face of stud consistent with industry practice. For reference, the architectural plans also include floor area measurements based on the Town Code.

- Develop two-, three- and four-bedroom homes with an average living area of at least 1,823 square feet and average ceiling heights of at least 9 feet to meet the needs of families and other households and provide a comfortable and attractive living space.
- Provide 26 units at below market rate pricing, with the remainder of the units provided at market rate pricing. Sixteen homes will be made affordable for Low income households and ten homes will be made affordable to Moderate income households, in accordance with the Town's Below Market Price Housing Program Guidelines.
- Ensure that the project is financially feasible for SummerHill (as the developer currently in contract to purchase the project site).
- Ensure a cost-efficient design, including architecture and infrastructure improvements.

Requested Approvals

SummerHill respectfully requests Architecture and Site Approval, a Conditional Use Permit, benefits pursuant to the State Density Bonus Law and the Town's Density Bonus ordinance, a tree removal permit, a Vesting Tentative Subdivision Map and CEQA review for the project.

SummerHill submitted an SB 330 Preliminary Application for the project on June 29, 2023, and the Town acknowledged receipt on July 6, 2023. Pursuant to section 65589.5 of the Government Code, the project is subject only to the ordinances, policies, and standards adopted and in effect when the Preliminary Application was submitted.

General Plan and Zoning Consistency

The proposed project is consistent with the applicable General Plan. The site is designated Mixed Use Commercial in the Land Use Element of the 2020 General Plan and is zoned Highway Commercial (CH). The Mixed-Use Commercial designation allows residential use on the site in a mixed-use project, with a 35-foot height limit. The Highway Commercial District allows multifamily residential use (in a mixed-use project), subject to the approval of a conditional use permit, with up to 50 percent lot coverage.

The site is identified as a Housing Inventory Site in the 2023–2031 Housing Element adopted by the Town on June 4, 2024, and certified by the State Department of Housing and Community Development on July 10, 2024.

Architecture and Site Approval

SummerHill respectfully requests that the Town grant Architecture and Site Approval for the project. The purpose of Architecture and Site Approval is to regulate the height, width, shape, proportion, siting, exterior construction and design of buildings to ensure that they are architecturally compatible with their surroundings.

Section 29.20.150 of the Town Code lists the matters that the Town must consider when reviewing applications for Architecture and Site Approval. Section 29.20.150 does not specify objective standards for residential projects, but SummerHill will work with Staff to provide information regarding the matters listed in section 29.20.150. Pursuant to Government Code section 65589.5,

SummerHill respectfully notes that the matters listed in section 29.20.150 may not serve as grounds to disapprove the project or condition approval in a manner that renders the project infeasible.

With respect to the matters listed in section 29.20.150, SummerHill notes the following:

- SummerHill has commissioned a traffic study to evaluate the potential effects of the project on roadways and intersections. Based on the results of the study, SummerHill will incorporate appropriate measures into the project to the extent needed to comply with the Town's objective transportation standards. In addition, the project supports numerous policies set forth in the Mobility Element of the Town's General Plan through the following features:
 - Providing a public access easement for bicycle and pedestrian use to connect Los Gatos-Saratoga Boulevard to the boundary of Los Gatos High School, as shown on the plans. (Policies MOB-2.6, 2.7, 3.2.)
 - Reusing the existing access point to the site rather than changing traffic patterns or introducing new curb cuts. (Policies MOB-8.3, 8.5.)
 - Maintaining a single point of non-emergency access to the site and not creating a new cut-through route for vehicle traffic. (Policy MOB-9.2.)
 - Providing 20-foot wide alleys on site to discourage speeding vehicles. (Policies MOB-4.2, 4.4.)
 - Providing two parking spaces for each residence plus parking spaces for guests. (Policy MOB-13.1.)
- The project will include a comprehensive landscape plan with trees, shrubs and other plants. Landscaping, buildings and fencing will screen parking areas from off-site view. The landscape plan will be consistent with the Town of Los Gatos design standards, will complement the project architecture, will comply with the requirements of the California Model Water Efficient Landscaping Ordinance, and will use trees/shrubs approved by the Town. During construction, SummerHill will implement an erosion control plan to minimize dust and erosion. Trees will be removed only as needed to accommodate the project.
- With the concession, waivers and other benefits requested pursuant to the State Density Bonus Law, the site plan and the architecture are consistent with the Zoning Regulations and the Town's Objective Design Standards. The townhome-style condominiums are oriented and located so that the project can continue to use the existing access point to the site, minimizing the impact on the surrounding neighborhood.
- Stormwater will be treated on site as required to meet municipal stormwater permit requirements. Stormwater will be conveyed by gravity and pump to bioretention areas and other low impact development (LID) treatment measures before being discharged to existing public storm drains and swales that currently serve the site. Hydromodification measures will be used to detain project stormwater, ensuring post project flows less than or equal to pre-project flows.

- Consistent with the architectural quality and style of the Town, the architecture of the project draws on Mission-style aesthetics, with arched porch elements, low-sloping hip and gable roofs with rounded roof tiles, and metal accent details and railings. Exterior materials include a high-quality mix of decorative tile accents at key window locations and porch openings. The color schemes have been selected to showcase the Mission-style architecture.
- A photometric plan will be developed to ensure adequate lighting is provided throughout the site, and the proposed light fixtures will comply with the Town's objective design standards.
- Access throughout the site will comply with applicable provisions of the Americans with Disabilities Act.

Conditional Use Permit

SummerHill respectfully requests that the Town approve a Conditional Use Permit for the project to allow the development and occupation of the site for multi-family residential use (in a mixed-use project)² as described in the Project Description. Pursuant to section 29.20.190 of the Town Code, the Town may approve a Conditional Use Permit if the proposed residential use of the site is essential or desirable to the public convenience or welfare, the proposed residential use will not impair the integrity and character of the zone, the proposed residential use will not be detrimental to public health, safety or general welfare, and the proposed residential use is in harmony with the elements or objectives of the applicable General Plan and the purposes of the Town's Zoning Regulations. Section 29.20.190 does not specify objective standards for residential projects, but SummerHill will work with Staff to provide information regarding the matters listed in section 29.20.190. Pursuant to Government Code section 65589.5, SummerHill respectfully notes that the matters listed in section 29.20.190 may not serve as grounds to disapprove the project or condition approval in a manner that renders the project infeasible.

By designating the site as a Housing Inventory Site in the 2023–2031 Housing Element, the Town previously determined that the project site is suitable for residential use and that development of the site for residential use would assist the Town in meeting its Regional Housing Needs Allocation. Therefore, the project is essential or desirable to the public convenience or welfare and in harmony with the elements or objectives of the applicable General Plan, and the project will not impair the integrity and character of the zone. Furthermore, with the incentive, waivers and other benefits requested pursuant to the State Density Bonus Law, the project is consistent with the applicable General Plan and with applicable Zoning Regulations and Objective Design Standards, and the project will not have any specific, adverse impact upon the public health or safety.

State Density Bonus

SummerHill proposes to designate certain units as inclusionary units affordable to Low, Lower or Moderate Income households to comply with the Town's Below Market Price (BMP) Program and to qualify for benefits under the State Density Bonus Law and other relevant provisions of the

² As discussed below, SummerHill is requesting a concession or incentive to allow the site to be developed without a mixed-use component.

Government Code. By designating at least 10% of the units as inclusionary units affordable to Low Income households, the project qualifies for a density bonus, an incentive or concession, waivers or reductions of development standards and parking reductions under the State Density Bonus Law. To the extent feasible, the BMP units will be provided proportionately in the same unit type mix and in each phase of occupancy as the market-rate units, and the units will be dispersed throughout the development.

Under the State Density Bonus Law, a developer may propose as a concession or incentive any modification of a zoning code requirement (not just a reduction of a site development standard) or any other regulatory incentive or concession that results in identifiable and actual cost reductions to provide for affordable housing costs.³ In addition, the California Department of Housing and Community Development (“HCD”) has advised that “[a] concession may be sought not only to modify or eliminate a development standard but also to modify ‘zoning code requirements’” and that there is no language in the Density Bonus Law that creates “a distinction between requirements associated with ‘land use’ and development standards.”⁴

In addition, under the State Density Bonus Law, a developer may propose unlimited waivers of development standards that have the effect of physically precluding construction of a qualifying project, as proposed by the developer, at the densities or with the concessions or incentives permitted by the Density Bonus Law. Development standards include site or construction conditions, including but not limited to height limitations, on-site open space requirements, bicycle storage requirements, minimum street or alley widths, and parking standards.

The State Density Bonus Law allows the Town to request “reasonable documentation” to establish eligibility for a requested waiver, but the only “reasonable documentation” that the Town may require is that the project qualifies for a density bonus.⁵ Once a project qualifies for a density bonus, the law provides a developer with broad discretion to design projects with additional amenities even if doing so would conflict with local development standards.⁶ The Town may refuse the waiver only if the waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment, would have an adverse impact on a historic resource, or would be contrary to State or Federal law.⁷ In this context, specific adverse impact “means a significant, quantifiable, direct, and

³ The Town’s Density Bonus Program Guidelines were adopted in 2012 in conjunction with Ordinance 2209 and do not appear to have been amended to be consistent with subsequent amendments to the State Density Bonus Law. In particular, SummerHill respectfully notes that section III.D of the Guidelines is not consistent with current law because section III.D suggests that the requested incentive or concession must be “required” to provide for affordable ownership costs.

⁴ See HCD Letter of Technical Assistance to the City of Santa Ana (Apr. 27, 2023) at pp. 3-4, available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/SantaAna-TA-04272023.pdf>.

⁵ See HCD Notice of Violation to the City of Encinitas (Jan. 20, 2022) at p.3, available at <https://www.hcd.ca.gov/community-development/housing-element/docs/sdiencinitas-nov-012022.pdf>.

⁶ HCD Notice of Violation to the City of Encinitas (Jan. 20, 2022) at p.3. See also *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal. App. 5th 755, 774–775.

⁷ Gov. Code § 65915, subd. (e)(1).

unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”⁸

The State Density Bonus Law also provides a cap on the parking ratios that can be imposed on qualifying projects and allows developers to use tandem parking spaces to comply with parking requirements.

SummerHill believes that the proposed mix of 16 Low and 10 Moderate income BMP units complies with the Town’s BMP Program. If, however, the Town determines that the proposed mix of Low and Moderate income BMP units does not comply with the objective standards of the Town’s BMP Program, SummerHill respectfully requests a waiver or reduction of the Town’s BMP program to waive any applicable requirement to provide additional BMP units or modify the affordability level of the proposed BMP units.⁹

Concession or Incentive to Eliminate Mixed-Use Requirement

SummerHill respectfully requests a concession or incentive to allow the site to be developed without a mixed-use component.¹⁰ After consulting with commercial real estate brokers who are familiar with the local Los Gatos market, SummerHill has determined that dedicated retail, office or other commercial space on the project site as part of the project would not be able to generate revenue sufficient to cover the cost of land and construction. Therefore, development of dedicated retail, office or other commercial space would incur a loss for the project, and eliminating the dedicated retail, office or other commercial space would result in identifiable and actual cost reductions to provide for affordable housing costs.¹¹ In addition, dedicated retail, office or other commercial space would displace proposed residential uses, which would reduce the number of BMP units and the project’s contribution towards meeting the Town’s Regional Housing Needs Allocation. Furthermore, reducing the number of BMP units would conflict with the Town’s obligation to affirmatively further fair housing.¹²

Waiver to Increase Allowable Building Height

SummerHill respectfully requests a waiver or reduction of development standards to increase the height limit from 35 feet to approximately 40 feet, in order to accommodate a Mission-style architectural aesthetic with low-sloping gabled and hipped roofs, consistent with the architectural

⁸ Gov. Code, §§ 65915, subd. (e)(1), 65589.5, subd. (d)(2).

⁹ Providing additional BMP units or modifying the affordability of the proposed BMP units would not be possible without increasing the total number of units or decreasing the number of market rate units, neither of which would be consistent with the project as proposed or with the project objectives. In addition, SummerHill respectfully notes that requiring additional BMP units or requiring that the pricing for BMP units be set for higher income levels would disincentivize the production of more deeply affordable units, which would conflict with the Town’s obligation to affirmatively further fair housing.

¹⁰ As provided in subdivision (d)(1) of Government Code section 65915, the Town must grant the concession unless the Town makes one of three specified findings in writing based on substantial evidence. The Town would bear the burden of proof for the denial of a requested concession. (Gov. Code § 65915, subd. (d)(4).)

¹¹ See also HCD Letter of Technical Assistance to the City of Santa Ana (Apr. 27, 2023) at pp. 3-4.

¹² See Gov. Code § 65583, subd. (c); Gov. Code § 8899.50.

styles of the nearby neighborhoods. It is not physically possible to include a Mission-style roof with hips and gables and comply with the 35-foot height limit without decreasing the number of floors or substantially reducing the ceiling heights, neither of which is consistent with the project as proposed and the project objectives. Increasing the height limit to approximately 40 feet would allow a Mission-style roof with hips and gables without having a significant impact on the surrounding neighborhood or the public.

Waiver to Reduce Private Open Space

SummerHill respectfully requests a waiver or reduction of development standards to decrease the amount of private open space required for each unit and reduce the minimum dimension of private open space from 6 feet (or 10 feet at ground level) to 3 feet. Each unit will have a private deck or patio to use as private open space. However, it is not physically possible to provide 100 square feet of private open space for each unit (or 200 square feet at ground level) with a minimum dimension of 6 feet (or 10 feet at ground level) without substantially reducing the living area of the units or eliminating units, neither of which is consistent with the project as proposed or with the project objectives. Furthermore, eliminating units would reduce the number of BMP units provided by the project, which would conflict with the Town's obligation to affirmatively further fair housing. SummerHill proposes to provide a patio or deck for each unit with a minimum dimension of 3 feet and a minimum area of approximately 32 square feet, with an overall average area of approximately 150 square feet per unit.

Waiver to Reduce Short-Term Bicycle Storage

SummerHill respectfully requests a waiver or reduction of development standards to decrease the number of short-term bicycle parking spaces from one space per unit to one space per ten units. Section A.2 of the Objective Design Standards for Qualifying Multi-Family and Mixed-Use Residential Development requires one short-term bicycle parking space per unit. SummerHill will provide one short-term bicycle parking space per ten units. It is not physically possible to provide more than the proposed number of short-term bicycle spaces without eliminating units or reducing floor area, which is not consistent with the project as proposed or the project objectives. Furthermore, as noted above, eliminating units would reduce the number of BMP units, which would conflict with the Town's obligation to affirmatively further fair housing.

Waiver to Reduce Rear Setback

SummerHill respectfully requests a waiver or reduction of development standards to reduce the setback requirement along the shared property line with Los Gatos High School. Section 29.60.435 of the Town Code states that a rear setback of 20 feet plus 1 foot for each foot of building height over 20 feet is required for rear yards which abut a lot in a residential zone. Although Los Gatos High School is an institutional use, the high school property is in the R1:20 residential zone. It is not physically possible to comply with the rear setback requirement without eliminating units or reducing floor area, which is not consistent with the project as proposed or the project objectives. Furthermore, as noted above, eliminating units would reduce the number of BMP units, which would conflict with the Town's obligation to affirmatively further fair housing.

Waiver to Reduce Alley Widths

SummerHill respectfully requests a waiver or reduction in development standards to reduce the minimum width of the private alleys to 20 feet. Sections 29.10.06702 and 29.10.06703 of the Town Code require a minimum right-of-way width of 56 feet for minor streets (24 feet for minor streets in hillside areas if parking is prohibited on both sides of the street) and a minimum width of 30 feet for alleys. Section 29.10.155 of the Town Code requires driveways which serve more than 25 parking spaces to be at least 22 feet wide if they provide both ingress and egress. (The term “driveway” is not defined in the Town’s zoning regulations.) Town Standard Plans ST-262 and ST-263 show an aisle width of 25 feet for 90-degree parking.

A Court and B Alley will be a minimum of 30 feet and 26 feet wide respectively. C Alley, D Alley and E Alley will be a minimum of 20 feet wide with standard 4-foot wide garage aprons, and parallel parking will be prohibited along both sides of the alleys. The proposed alley widths meet the requirements of the California Fire Code and local amendments. In addition, the proposed alley widths provide adequate space for vehicles to enter and exit all parking spaces for residents and guests. It is not physically possible to provide more than the proposed minimum width for the alleys without eliminating units or reducing floor area, which is not consistent with the project as proposed or the project objectives. Furthermore, as noted above, eliminating units would reduce the number of BMP units, which would conflict with the Town’s obligation to affirmatively further fair housing.

Waiver to Reduce Minimum Required Setbacks Above Second Floor

SummerHill respectfully requests a waiver or reduction of development standards to reduce or eliminate the additional third-floor setback. Objective Design Standard B.1.2 requires floors above two stories to be set back by a minimum of five feet from the ground-floor façade. It is not physically possible to provide the additional setback without eliminating units or reducing floor area, which is not consistent with the project as proposed or the project objectives. Furthermore, as noted above, eliminating units would reduce the number of BMP units, which would conflict with the Town’s obligation to affirmatively further fair housing.

Waiver to Increase Maximum Retaining Wall Length Without Breaks

SummerHill respectfully requests a waiver or reduction of development standards to allow certain sections of retaining wall along the property line to run in a straight continuous direction for more than 50 feet without breaks, offsets, landscape pockets, or landscaping. Objective Design Standard A.10.2 states that retaining walls shall not run in a straight continuous direction for more than 50 feet without including both (a) a break, offset, or landscape pocket in the wall plane of at least three feet in length and two feet in depth; and (b) landscaping at a minimum height of three feet at the time of installation along a minimum of 60 percent of the total length of the retaining wall.

All of the proposed retaining walls would comply with Standard A.10.2, with the exception of a 153-foot long retaining wall located along the frontage of the Highway 17 offramp. It is not physically possible to provide a break, offset or landscape pocket in the wall or install landscaping along the wall, because the grade at the base of the wall is located off-site, and shifting the retaining wall on-site would create inaccessible landscape pockets and reduce the amount of space available for the proposed units, which

would cause a reduction in floor area or the number of units, which is not consistent with the project as proposed or the project objectives. Furthermore, as noted above, reducing the total number of units would reduce the number of BMP units, which would conflict with the Town's obligation to affirmatively further fair housing.

Waiver to Allow Fence or Wall in Setback Along Street Frontage

SummerHill respectfully requests a waiver or reduction of development standards in order to allow a fence or wall within the required setback area facing the Highway 17 offramp and the section of Los Gatos-Saratoga Road west of the entry to the project site. Section 29.50.035 of the Town Code and Objective Design Standard A9.1 do not allow fences or walls within required setbacks along street frontages, except in limited situations. SummerHill proposes to install a 7-foot tall wood fence (6 feet of solid wood plus one foot of lattice) and an 8-foot tall wood fence (7 feet of solid wood plus one foot of lattice) within the required setbacks along the frontage of the Highway 17 offramp and the frontage of Los Gatos-Saratoga Road west of the entry to the project. The fences are physically necessary to provide privacy for the residents, safety for residents and the public while using the proposed bike and pedestrian path along the frontage, and reduction of noise from Highway 17, consistent with the project as proposed and the project objectives. It is not physically possible to provide the privacy, safety and quiet required for the project without the proposed fences.

Waiver to Allow Partial Screening of Ground-Level Utility Cabinets

SummerHill respectfully requests a waiver or reduction of development standards to allow partial screening of ground-level utility cabinets. Objective Design Standard A.7.3 requires street-level views of ground-level utility cabinets to be screened from sight with landscape planting, fencing, or a wall. SummerHill proposes to use a combination of fences and landscape planting to partially screen ground-level utility cabinets from sight. However, due to public utility requirements for clear access and Town requirements for sight distance at intersections, it is not physically possible for the project to fully screen the utility cabinets without eliminating units or reducing floor area, which is not consistent with the project as proposed or the project objectives. Furthermore, as noted above, eliminating units would reduce the number of BMP units, which would conflict with the Town's goal to affirmatively further fair housing.

Waiver to Allow Alternate Techniques to Differentiate the Base, Middle and Top of Alley-Facing Façades

SummerHill respectfully requests a waiver or reduction of development standards to allow alternate techniques for differentiating between the base, middle and top of the alley-facing façades. Objective Design Standard B.4.1 requires that the project use at least two specified architectural techniques to differentiate the base, middle and top of each street-facing façade. The project complies with Standard B.4.1 with respect to all façades that face public streets. However, with respect to façades that face internal private alleys, the project uses different techniques to differentiate the base, middle and top of the façades. For example, the project uses variations in building mass that protrude or recess 18 inches from the façade, rather than 24 inches. While these alternate techniques meet the spirit of Standard B.4.1, it is not physically possible to fully comply with Standard B.4.1 with respect to the alley-facing façades without eliminating units or reducing floor area, which is not consistent with the project as

proposed or the project objectives. Furthermore, as noted above, eliminating units would reduce the number of BMP units, which would conflict with the Town's obligation to affirmatively further fair housing.

Parking Reduction to Allow Tandem Parking

SummerHill respectfully requests that the Town allow SummerHill to use tandem parking spaces to meet the Town's parking requirements. SummerHill proposes to use a tandem configuration for the attached two-car garage for 31 of the two-bedroom units, consistent with the State Density Bonus Law. All other garages will have side-by-side configurations consistent with Town standards.

Further Waivers or Reductions of Development Standards

SummerHill reserves the right to request additional or different concessions or incentives, waivers or reductions of development standards or parking ratios as the project is reviewed.¹³

Density Bonus

To the extent that the project as proposed exceeds the maximum density allowed by the applicable General Plan and the Town's Zoning Code, SummerHill respectfully requests a density bonus to allow the development of 155 units.

Vesting Tentative Subdivision Map

SummerHill respectfully requests that the Town approve a Vesting Tentative Subdivision Map for the project to create separate legal parcels for the residential units and the subdivision common areas and to establish appropriate access, utility and service easements. SummerHill will separately prepare and record a condominium plans to define exclusive use areas and areas of separate undivided interests for the individual units. Following approval of the Vesting Tentative Map, SummerHill will prepare a Final Map. The proposed Vesting Tentative Map complies with the design standards and improvement standards in chapter 24 of the Town Code.

CEQA

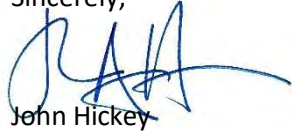
SummerHill anticipates that preliminary environmental review will confirm that the potential environmental impacts of the project were adequately evaluated in the Environmental Impact Report (EIR) prepared and certified for the 2040 General Plan. We anticipate that the Town, in conjunction with their CEQA consultant, will prepare a CEQA checklist or EIR addendum to confirm that no supplemental or subsequent EIR is required.

¹³ In particular, as noted above, if the Town determines that the proposed mix of Low and Moderate income BMP units does not comply with the Town's BMP Program, SummerHill respectfully requests a waiver or reduction of the Town's BMP program to waive any applicable requirement to provide additional BMP units or modify the affordability level of the proposed BMP units.

Joel Paulson
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We look forward to working with the Town regarding the proposed project. Please let us know if you have any questions regarding this Letter of Justification.

Sincerely,



John Hickey

Vice President of Development

cc: Sean Mullin, Planning Manager
Kevin Ebrahimi, Senior Vice President of Development
Jared Brotman, Director of Development

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