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**INTER-DEPARTMENTAL MEMORANDUM**

TO: AFFORDABLE HOUSING LINKAGE FEE OVERSIGHT COMMITTEE

FROM: TIENA JOHNSON HALL, GENERAL MANAGER

DATE: JULY 30, 2025

REGARDING: **UPDATE AND RELEVANT RECOMMENDATIONS REGARDING THE FY 2023-24 AFFORDABLE HOUSING LINKAGE FEE REVENUE AND FUTURE REVENUES**

On December 13, 2017, the Los Angeles City Council adopted the Affordable Housing Linkage Fee (AHLF) Ordinance (C.F. No. 17-0274), which amends Chapter II of the Los Angeles Municipal Code. Effective July 1, 2025, an adjustment to the Ordinance places a fee on residential development ranging from $1.28 to $23.20 per square foot, depending on the market area, and non-residential developments ranging from $3.86 to $6.44 per square foot, depending on market area, to mitigate housing market impacts of new projects and generate local funding for affordable housing production and preservation in the City. The Ordinance also stipulates various exemptions and deductions based on project characteristics.

The Housing Impact Trust Fund (HITF, Fund 59T) Linkage Fee receipts collected from July 1, 2023 through June 30, 2024, total $34,896,521. The AHLF funds are held in an interest-bearing account, and as of June 30, 2024, $2,403,394.56 had been collected from Interest Income, which is combined with Program Income to be distributed towards the tiered allocations (inclusive of both program and administrative dollars). As a note, this program generates income through the interest on the loans (interest income) and loan repayments on the loans (program income).

As of July 2, 2025, the total receipts collected from July 1, 2024 through June 30, 2025, total $36,629,965.77 (which includes interest and program income). At this time, due to pending litigation, the Los Angeles Housing Department (LAHD) has not created an expenditure plan for either FY 2023-24 nor FY 2024-25. During the course of the July 30, 2025 meeting, the Committee will be provided with various recommendations that will determine the future expenditure plans.

As instructed by the AHLF Oversight Committee (OC) at the April meeting, the LAHD has paused expenditures of program receipts collected in FY 2023-24, as well as FY 2024-25, due to the pending High Road Litigation. While the High Road Litigation has partially concluded, there are provisions in

the legal opinion that will have an impact on the Department's ability to establish an expenditure plan. Based on Committee action derived from the legal options provided in closed session at the July 30, 2025 meeting, the Department will return with an updated expenditure plan at a to be determined date. Also, and in addition to the legalities surrounding the Linkage Fee, there are several unknowns in the overall ecosystem of Housing production and preservation funding that preclude the Department from providing a highest and best use at this time; these are described later in the report. However, there are some immediate recommended changes relative to revising the tiered allocation structure that can be effectuated at this time.

**RECOMMENDATIONS**

The General Manager of the Los Angeles Housing Department (LAHD) respectfully requests that the AHLF OC recommend that the Council, subject to approval by the Mayor, take the following actions:

I. INSTRUCT the Los Angeles Housing Department to implement an expenditure plan based on the City Attorney advice related to the High Road Litigation.

II. INSTRUCT the Los Angeles Housing Department to implement an expenditure plan consistent with the Mitigation Fee Act.

III. INSTRUCT the Los Angeles Housing Department to combine Rental - Preservation and Rental - New Construction categories in the Affordable Housing Linkage Fee Funding Tier Structure.

IV. INSTRUCT the Los Angeles Housing Department to remove the Innovative Housing Demo and Innovative Housing Demo ADU categories from the Affordable Housing Linkage Fee Funding Tier Structure and reallocate existing and future funds to the newly combined Rental - Preservation and Rental - New Construction category at all Tier levels.

V. INSTRUCT the Los Angeles Housing Department to report back on how the Department's Homeownership Program outcomes assist in the City meeting its Regional Housing Needs Assessment (RHNA) goals and reducing homelessness.

VI. AUTHORIZE the LAHD General Manager, or designee, to prepare Controller instructions and make any necessary technical adjustments consistent with the Mayor and City Council actions, subject to the approval of the City Administrative Officer (CAO), and authorize the Controller to implement these instructions.

**BACKGROUND**

Although receipts and interest were collected in FY 2023-24 as detailed in the previous report, the LAHD did not recommend an expenditure plan at the previous AHLF OC meeting due to a pending lawsuit described in the section below. Additional litigation, as a result of the Mitigation Fee Act, will be discussed in closed session at the July 30, 2025 meeting. This litigation will impact the pending FY 2023-24 and FY 2024-25 expenditure plans.

This report provides status updates on the two pending legal issues related to the fund and provides relevant information as it relates to the highest and best use of the fund in place of the current tiered allocation structure.

Linkage Fee Lawsuit Updates

Final resolution of *The Highroad, LLC v. City of Los Angeles et al.*, Case No. 21STCV37436 (consolidated with Case No. 23STCV24554), will resolve whether the City (1) lawfully imposed linkage fees on approximately 629 developments; and (2) must refund those fees.

Plaintiff, The Highroad, LLC ("Highroad"), identified 629 circumstances in which the City had imposed linkage fees and arranged with the persons or entities who paid or owed linkage fees to assign to Highroad their rights to challenge the legality of the linkage fees and to seek refunds. Highroad then filed suit to challenge the linkage fees and seek refunds, for itself, of approximately $16 million in fees paid or owed by parties who purportedly assigned their claims to Highroad. The Superior Court ruled that the Linkage Fee is not a special tax, but the City had not complied with the Mitigation Fee Act with respect to one type of residential development - additions to, or replacement of, single family homes resulting in net increase of 1,501 square feet or more (SFH).

The Mitigation Fee Act ("MFA") was enacted by the California state legislature (Govt. Code § 66000 *et seq*) in the 1980s to address developer concerns that local agencies were imposing development fees for purposes unrelated to development projects. Amendments in subsequent years added many requirements to the original ones in the MFA. One of the MFA's primary requirements is that a local agency, prior to imposition of a legislatively enacted, generically applicable fee on development types as a condition of approval of development projects, identify the purpose and use of the fee, and demonstrate a reasonable relationship or nexus between the fee's need and use, and the type of development project subject to the fee. Gov. Code § 66001(a).

After the Court ruled on the special tax and MFA causes of action, the City filed a motion for an order barring Highroad from recovering any refunds. The City asserted that Highroad, as a third party did not itself pay any fees, lacks any right to refunds as a matter of statutory and common law, irrespective of the purported assignments. On March 20, 2025, the Court granted the City's motion, ruling that irrespective of the Court's order declaring the linkage fees to have been unlawfully imposed, and irrespective of the purported assignment of the refund claims, Highroad may not recover refunds. The Court also vacated the August 4, 2025 date it had set for a damages/refund trial.

Highroad filed a motion for reconsideration, or in the alternative, motion to substitute the individual property owners for Highroad, which the Court denied on June 11, 2025. The Superior Court entered Judgment on July 2, 2025.

Highroad filed a notice of appeal on July 8, 2025. Highroad will seek to persuade the California Court of Appeal, Second District, to reverse the Superior Court's determination that Highroad may not recover refunds. The City may also appeal, upon filing a notice of cross-appeal, seeding reversal of the Superior Court's determination that the City unlawfully imposed the fees.

AHLF Highest and Best Use Analysis

***Background on AHLF In Relation to Other Funding Sources***

In order to conduct the highest and best use analysis for the Linkage Fee funds, it is necessary to evaluate the limitations of the other funding sources within the Department. Below are the key provisions for funding sources available to the Housing Development Bureau for various programs. This information should serve as a point of reference.

**1. Labor Requirements:**

- **Most Stringent:** The United to House LA Ordinance (ULA) and Los Angeles County Affordable Housing Solutions Agency (LACAHSA) Funds (Senate Bill (SB) 679 and Measure A) impose the most rigorous labor requirements, mandating prevailing wages for all construction and rehabilitation. They also necessitate Project Labor Agreements (PLAs) for projects exceeding 40 units.
- **More Flexible:** HOME Investment Partnerships Program (HOME), SB2, and Linkage Fee programs mandate prevailing wage compliance. PLAs are required for Prop HHH projects with 65 or more units.

**2. Minimum Project Size:**

- **Specific Minimums:** The ULA requires a minimum of 40 units for new construction, with no specified minimum for preservation or rehabilitation projects.
- **Flexible Minimums:** LACAHSA Funds, HOME, SB2, and Linkage Fee programs generally do not have a minimum project size. However, Measure A under LACAHSA still stipulates that 80% of PLA-funded units must be 40 units or more.

**3. Subordination of Affordability Restrictions:**

- **Senior Affordability Restrictions:** The ULA is unique in requiring its affordability restrictions to be senior to any lien, deed of trust, or any restriction upon the property - in other words, the ULA affordability restrictions persist through foreclosure events.
- **Subordinated Affordability Restrictions:** HOME, SB2, Linkage Fee, and LACAHSA Funds allow for the affordability restrictions to be subordinated, or junior, to other restrictions and conditions.

**4. Term of Affordability:**

- **Perpetuity:** The ULA requires affordability covenants in perpetuity, but has an exemption for a term of no less than 55 years for projects with non-ULA funding sources that are incompatible with restrictions in perpetuity.
- **Fixed Term:** HOME, SB2, and Linkage Fee programs all specify a '55 years (Rental)' term.
- **Undefined:** LACAHSA funds have a 'not defined' term of affordability, this is still under negotiation

**5. Rental Property Resale Limitations:**

- **Limited to Non-Profits:** The ULA is the only source with explicit limitations, restricting resale to non-profit organizations.
- **No Limitations:** HOME, SB2, Linkage Fee, and LACAHSA Funds programs have no resale restrictions.

**6. Affordability Requirements:**

- **Varying Area Median Income (AMI) Percentages:**
    - **ULA:** All units must be below 80% AMI, except Alternative Models Program projects, which allow for up to 20% of units with no rent or income restrictions, but with a minimum of 20% of units at 15%/30% AMI.
    - **LACAHSA Funds:** All units are at 80% AMI, with 10% at 30% AMI and 10% at 50% AMI. Certain exceptions permit up to 50% of units (up to 50 total units per project) at 120% AMI.
    - **HOME:** 90% of units at 60% AMI, and 10% at 80% AMI.
    - **SB2:** Specifies 60% AMI, with 150% AMI for MIPA.
    - **Linkage Fee:** Permits up to 120% AMI, with LIPA programs utilizing 80% AMI.

**7. Timeliness Requirement:**

- **Varying Deadlines:**
  - **ULA:** Funds must be awarded within 3 years and expended within 5 years. For alternative models, the award period is 5 years, and expenditure within 7 years.
  - **LACAHSA Funds:** Funds must be expended within 3 years of the award date.
  - **HOME:** Funds must be committed within 2 years (including reserving funds for CHDOs) and expended within 5 years.
  - **SB2:** Funds are required to be expended by 2030.
  - **Linkage Fee:** No timeliness requirement is defined.

**8. Supported Programs and Eligible Uses:**

- **Diverse Program Support:** All funding sources support a broad range of programs, encompassing new construction, preservation, and homeownership. Some also provide support for operations assistance, asset protection funds, and eviction defense.
- **Consistency in Eligible Uses:** All funding sources consistently designate 'new construction, preservation, and homeownership' as eligible uses.

**Key Takeaways:**

- **The ULA represents the most restrictive funding source,** characterized by stringent labor requirements, a specific minimum project size for new construction, no flexibility for subordination of affordability covenants, and affordability terms ranging from 55 years to perpetuity. It also imposes specific resale limitations.
- **LACAHSA Funds exhibit certain parallels with the ULA** in terms of labor requirements, but are less defined regarding affordability terms and resale limitations. Notably, they include a unique provision allowing a portion of units at 120% AMI.
- **HOME, SB2, and Linkage Fee programs are generally more flexible,** featuring less stringent labor requirements, no minimum project size, the flexibility to subordinate affordability covenants, and a consistent 55-year affordability term. Their affordability requirements span various AMI percentages, addressing diverse income levels.
- **Timeliness requirements demonstrate significant variability across funding sources,** underscoring the critical importance of understanding these deadlines during project planning.

***Table 1: Linkage Fee Supported Programs with Leveraged Sources And Units Produced***

| Program Name | Average* Annual LF Allocation | Average Annual Leveraged Source Allocation | Average Annual Program Allocation Amount | Leveraged Sources | Average Cost Per Unit | Average Annual Units Produced or Loans Issued with Leveraged Sources |
|---|---|---|---|---|---|---|
| Rental - New Construction (fka AHMP) | $16,229,929 | $40,688,104 | $57,000,000 | SB2, HOME | $600,000 | 200 Units |
| Rental - Preservation | $5,003,672 | $8,191,444 | $13,100,00 | SB2, HOME | $750,000 | 60 Units (Projected) |
| Homeownership - MIPA | $4,337,474 | $4,176,993 | $8,500,000 | SB2 | $591,550 | 38 Loans |

| Program Name | Average* Annual LF Allocation | Average Annual Leveraged Source Allocation | Average Annual Program Allocation Amount | Leveraged Sources | Average Cost Per Unit | Average Annual Units Produced or Loans Issued with Leveraged Sources |
|---|---|---|---|---|---|---|
| Homeownership - LIPA | $657,292 | $4,801,006 | $5,500,000 | SB2, HOME, FCB Grant | $511,253 | 4 Loans |
| Innovative Housing Demo | $641,610 | N/A | $641,610*** | N/A | Unknown | 0 |
| Innovative ADU Demo | $500,000**** (One Time) | N/A | $0** | N/A | Unknown | 0 |

**Averages were calculated with allocations from the last three years.*
***The AHLF revenue has not yet reached Tier 3, which funds the Innovative Housing Demo ADU category.*
**** Since Linkage Fee is the only source supporting the Innovative Housing Demo, therefore the Average Annual Program Allocation Amount equals the Average Annual Linkage Fee Allocation.*
*****The initial allocation for the Innovative ADU Demo (One-Time) was $1,176,471 in (CF 17-0274 4/10/2019). In the 2023 AHLF OC report, there was a recommendation to transfer $676,471 from ADU to Rental - New Construction leaving a balance of $500,000 (currently with $0 expended or encumbered).*

***Status of Other Funding Sources***

At the time of this report, there are several areas of uncertainty that make it challenging to recommend the final highest and best uses of the Linkage Fee funds. Below are the present unknowns as they relate to LAHD's available capital sources, current uses of the various capital funds, and followed by potential reallocation scenarios.

1. **Permanent Local Housing Allocation Program (PLHA)/SB2 Homeownership Requirement Changes**: At present, the Department allocates 20% of its annual PLHA SB2 funds to the Moderate Income Purchase Assistance Program (MIPA) which provides first-time homebuyers earning between 81-150% AMI with a loan for down payment, closing costs, and acquisition. Year-to-date (since 2019), that amount totals $21,787,415, of which $13,052,895 has been expended, and approximately 120 loans have been issued. Given that the State governs the usage of these dollars, the State controls allocation requirements. Recently, the State indicated that they may direct jurisdictions to utilize 40% of their entire PLHA SB2 award, double the statutory requirement of Senate Bill 2 (2017), on homeownership opportunities. The State's determination on the required homeownership program allocation will be confirmed when the application for the new five-year cycle is released, which is expected by October 2025.

2. **HOME Funds Projection:** The Department predicts that, given the federal budget proposed by the President, the HOME allocation to the City of Los Angeles will significantly decrease or disappear altogether. In FY 2025-26, $0 will be allocated to the Low Income Purchase Assistance Program (LIPA) from HOME and in FY 2024-25, the Department allocated $500,000 to LIPA. The two prior fiscal years, the allocation accounted for about $4.2M or an average of 84.55% of the LIPA program funds.

3. **ULA Homeownership:** The ULA Measure and Ordinance provide for a dedicated Homeownership Opportunities Program. In addition, the ULA Alternative Models and ULA Acquisition and Rehabilitation Programs currently provide multifamily rental housing, but these programs can be retooled to support multifamily homeownership projects such as cooperatives, and rental projects which under these two programs can be converted into tenant ownership.

The ULA Homeownership Opportunities Program will fully support the LIPA program. The initial ULA allocation for the LIPA Program is $11,699,806. The anticipated annual ULA allocation for the LIPA Program for the next three years is as follows:

a. $15.6M for FY 2025-26, $15.5M for FY 2026-27, and $15.5 for FY 2027-28.
b. If the total average annual LIPA allocation for the last 5 years from HOME dollars equaled $5,458,298, and the ULA allocation for LIPA in year one equals $11,699,806 with projections totalling up to $15M from ULA, then the ULA program will more than double the average annual allocation of LIPA funding from HOME.

4. **LACHSA Homeownership Opportunities:** LACHSA released its final expenditure plan and, for FY 2025-26, 70% of the LACAHSA budget will be dedicated to Production, Preservation, and Ownership programs - $229.6 million for use County-wide. Of the $229.6 million, the agency of LACHSA will have about $48 million to program for potential homeownership uses. Finally, of the eligible uses for ownership, LACHSA will offer soft second mortgages and affordable housing (Low and Moderate) homeownership lending products. Funding will be available for new opportunities in homeownership programs for both low-income and moderate-income populations throughout the region.

***Reallocation Scenarios Given Possible Outcomes to Funding Sources***

1. **PHLA SB2 (MIPA) Potential Guidance from HCD:** Contingent on the State's new requirement to increase the Homeownership Allocation amount to 40%, the MIPA Homeownership Program could be allocated up to about $16 million compared to $8 million. At present, between the Linkage Fee and PHLA, the program receives about $11 million annually. If HCD provides guidance on required allocation changes, the Department would recommend eliminating Linkage Fee funding to the MIPA program and replacing it with funding from PHLA SB2 which would result in a roughly $5 million increase in annual program dollars for MIPA.
    a. **PHLA SB2 New Construction and Preservation Impacts -** If the State proceeds with a requirement to increase the homeownership allocation to 40%, up from 20%, there would be a loss of 20% to New Construction/Preservation, or about $9 million annually. The recommendation to backfill the $9 million with Linkage Fee will result in a net loss of roughly $5 million for Rental/Preservation, based on average annual Linkage Fee receipts.

2. **Elimination or Significant Decrease of HOME Allocation:** HOME serves as a leveraging source in two programs with Linkage Fee: 1) LIPA and 2) Pooled Sources Production & Preservation (fka AHMP). Should the HOME program be eliminated, the Linkage Fee funds would not be sufficient to replace the lost funding. This new shortfall will have a minimal impact on the LIPA program given the decrease in allocation amounts from roughly $4.2M to $500,000 to now, $0. But, as discussed above, the ULA allocation will be able to fully support LIPA. Worst case scenario, if HOME funds are eliminated, the Pooled Sources Production & Preservation bucket will decrease by roughly 46% or an average of $27 million, annually. If all the LIPA funds from Linkage Fee went towards Pooled Sources Production & Preservation, that would be an additional average amount of $657,292, annually. Though this amount is nominal, the Department recommends allocating as much money into new production & preservation as possible.

AHLF Recommendations

1. **Combine Rental - New Construction and Rental - Preservation:** Council approved the Department's Homes for LA Notice of Funding Availability (NOFA) Pooled Sources Program (CF 25-0690) on July 1, 2025. The Pooled Sources Program in the NOFA has been designed to accept both new construction and preservation proposals. Therefore, since Pooled Sources includes Linkage Fee, the Department recommends combining the Rental - New Construction and Rental - Preservation Linkage Fee tier categories into a single category to match the Homes for LA NOFA design. Additionally, the Department recommends expanding the scope of preservation uses under Linkage Fee to include:
    a. **Resyndication -** Resyndication in the context of Low-Income Housing Tax Credit (LIHTC) refers to the process of obtaining a new allocation of LIHTCs for an existing LIHTC property, typically after the initial 15-year compliance period. This allows for the preservation of affordable housing through rehabilitation and upgrades, making older properties more sustainable and marketable.
    b. **Recapitalization -** Recapitalization may or may not include tax credits and centers on a restructuring of the financing in a deal, typically around year 15 of their initial 15-year compliance period.
    c. **Covenant Affordability Extensions -** Extension of an affordability covenant refers to the act of providing funds to a borrower so that they are able to finance a longer term of affordability on a unit. Meaning, the sponsor requires funds to make the actual changes to the covenant agreement and the project needs additional funds to subsidize units long term because the original cash flow of the building's operations funding will end otherwise.
    d. **Operations Support -** Operations support refers to supplementing The U.S. Department of Housing and Urban Development (HUD) vouchers, Flexible Housing Subsidy Pool or other rental subsidy in order to ensure that each unit cash flows in a sustainable capacity for the building.
    e. **Replenishment and/orOperating Reserves -** Replenishment of replacement reserves refers to the required excess cash each building must maintain in order to make repairs to the building. Operating reserves refers to the excess cash required to subsidize building operations established via underwriting. A fund to help replenish both buckets of funds to make more projects healthy would increase the overall health of the portfolio.
    f. **Protection Mechanisms -**
        i. Advancing funds to pay past due senior loan obligations to avoid third-party foreclosure.
        ii. Advancing funds to pay delinquent property taxes to avoid tax foreclosure.
        iii. Paying unfunded litigation and settlement costs associated with borrower disputes.
        iv. Funding insurance, emergency repairs, and receiverships to fund the enforcement of lender rights for the protection of LAHD loan and security.

2. **Remove The Innovative Housing Demo and Innovative Housing Demo ADU Categories:** Neither the Innovative Housing Demo nor the Innovative Housing Demo ADU funds have been expended since the decision to allocate the funds. This is in large part because program design for the ADU program (CF 21-0541) has not been scheduled in committee for approval. Additionally, the Innovative Housing Demo funds lacked a scope and without sufficient matching funds from another source, the Department has been unable to include them in a new project. The Department recommends removing these categories and rolling the funds into Rental - New Construction and Rental - Preservation for more expedient expenditure of these funds in the forthcoming Homes for LA NOFA.

3. **Allocate All Linkage Fee MIPA Funds to Rental - New Construction and Rental - Preservation:** Following the increase to the SB2 contribution for MIPA, the Rental - New Construction and Rental - Preservation categories' Linkage Fee allocations would total $25 million annually.

4. **Eliminate All Linkage Fee Funding for LIPA:** The LIPA program has an average allocation of $6.3 million annually made up of funds from Linkage Fee, HOME, and First Citizens Bank Community Development Grant. Meanwhile, the ULA proposes $11,699,806 for the LIPA program in Year 1. Given that the Linkage Fee contribution to LIPA is nominal and the ULA proposed LIPA program allocation totals more than all of the other sources combined, the Department recommends that Linkage Fee funds no longer be allocated to LIPA and instead rolled into a combined category of preservation and new construction of rental housing.

5. **Request the Department to Report Back on How the Homeownership Program Outcomes Assist in the City Meeting Its RHNA Goals and Reducing Homelessness:** Given the dynamic landscape of the Los Angeles housing market and the increase to single family home purchases throughout the region, it is critical that the Department evaluate the deployment of its funds. At a time when there are nearly 45,000 people experiencing unsheltered homelessness in Los Angeles, the Department must make the most efficient use of its funds which requires a full review of all investments, including homeownership.