

HOUSE BILL No. 1362

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-48-1-7; IC 36-7.

Synopsis: Unsafe buildings and disposal of property. Allows a receiver in possession of property to sell the property. Provides for repair alternatives for unsafe buildings in a receivership. Exempts certain redevelopment property in blighted areas in Marion County from multiple appraisals. Makes certain other changes.

Effective: July 1, 1999.

Summers, Crawford, Behning

January 12, 1999, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1362

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-48-1-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. The receiver may,
3 under control of the court or the judge:
4 (1) bring and defend actions;
5 (2) take and keep possession of the property;
6 (3) receive rents; ~~and~~
7 (4) collect debts; ~~and~~
8 **(5) sell property;**
9 in the receiver's own name, and generally to do such acts respecting the
10 property as the court or judge may authorize.
11 SECTION 2. IC 36-7-9-20 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. (a) A court acting
13 under section 17 of this chapter may appoint a receiver for the unsafe
14 premises, subject to the following conditions:
15 (1) The purpose of the receivership must be to **sell or** take
16 possession of the unsafe premises for a period sufficient to
17 accomplish and pay for repairs and improvements.

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1 (2) The receiver may be a not-for-profit corporation the primary
 2 purpose of which is the improvement of housing conditions in the
 3 county where the unsafe premises are located, or may be any
 4 other capable person residing in the county.

5 (3) Notwithstanding any prior assignments of the rents and other
 6 income of the unsafe premises, the receiver must collect and use
 7 that income to repair or remove the defects as required by the
 8 order, and may, upon approval by the court, make repairs and
 9 improvements in addition to those specified in the order or
 10 required by applicable statutes, ordinances, codes, or regulations.

11 (4) The receiver may make any contracts and do all things
 12 necessary to accomplish the repair and improvement of the unsafe
 13 premises.

14 **(5) A receiver appointed to sell an unsafe premises may sell
 15 the property:**

16 **(A) to the highest bidder at auction under the same notice
 17 and sale provisions applicable to a foreclosure sale of
 18 mechanic's liens or mortgages; or**

19 **(B) for fair market value if all persons having a substantial
 20 property interest in the unsafe premises agree to the
 21 amount and procedure.**

22 **The transferee in either a public or private sale must first
 23 demonstrate the necessary ability and experience to
 24 rehabilitate the premises within a reasonable time to the
 25 satisfaction of the receiver.**

26 ~~(5)~~ (6) The court may, after a hearing, authorize the receiver to
 27 obtain money needed to accomplish the repairs and improvement
 28 by the issuance and sale of notes or receiver's certificates to the
 29 receiver or any other person or party bearing interest fixed by the
 30 court. The notes or certificates are a first lien on the unsafe
 31 premises and the rents and income of the unsafe building. This
 32 lien is superior to all other assignments of rents, liens, mortgages,
 33 or other encumbrances on the property, except taxes, if, within
 34 sixty (60) days following the sale or transfer for value of the notes
 35 by the receiver, the holder of the notes files a notice containing
 36 the following information in the county recorder's office:

37 (A) The legal description of the tract of real property on which
 38 the unsafe building is located.

39 (B) The face amount and interest rate of the note or certificate.

40 (C) The date when the note or certificate was sold or
 41 transferred by the receiver.

42 (D) The date of maturity.

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1 ~~(6)~~ (7) Upon payment to the holder of a receiver's note or
 2 certificate of the face amount and interest, and upon filing in the
 3 recorder's office of a sworn statement of payment, the lien of that
 4 note or certificate is released. Upon a default in payment on a
 5 receiver's note or certificate, the lien may be enforced by
 6 proceedings to foreclose in the manner prescribed for mechanic's
 7 liens or mortgages. However, the foreclosure proceedings must be
 8 commenced within two (2) years after the date of default.

9 ~~(7)~~ (8) The receiver is entitled to the same fees, commissions, and
 10 necessary expenses as receivers in actions to foreclose mortgages.
 11 The fees, commissions, and expenses shall be paid out of the rents
 12 and incomes of the property in receivership.

13 (b) The issuance of an order concerning unsafe premises is not a
 14 prerequisite to the appointment of a receiver nor does such an order
 15 prevent the appointment of a receiver.

16 (c) If the enforcement authority or the enforcement authority's
 17 designee requests the appointment of a receiver, all persons having a
 18 substantial property interest in the unsafe premises shall be made party
 19 defendants.

20 **(d) A court, when granting powers and duties to a receiver, shall**
 21 **consider:**

- 22 **(1) the occupancy of the unsafe premises;**
- 23 **(2) the overall condition of the property;**
- 24 **(3) the hazard to public health, safety, and welfare;**
- 25 **(4) the number of persons having a substantial property**
 26 **interest in the unsafe premises; and**
- 27 **(5) other factors the court considers relevant.**

28 **(e) Instead of appointing a receiver to sell or rehabilitate an**
 29 **unsafe premises, the court may permit an owner, a mortgagee, or**
 30 **a person with substantial interest in the unsafe premises to**
 31 **rehabilitate the premises, if the owner, mortgagee, or person with**
 32 **substantial interest:**

- 33 **(1) demonstrates ability to complete the rehabilitation within**
 34 **a reasonable time;**
- 35 **(2) agrees to comply within a specified schedule for**
 36 **rehabilitation; and**
- 37 **(3) posts a bond as security for performance of the required**
 38 **work in compliance with the specified schedule in subdivision**
 39 **(2).**

40 SECTION 3. IC 36-7-15.1-12 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. (a) If no appeal is
 42 taken, or if an appeal is taken but is unsuccessful, the commission shall

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1 proceed with the proposed project, to the extent that money is available
2 for that purpose.

3 (b) The commission shall first approve and adopt a list of the real
4 property and interests in real property to be acquired, and the price to
5 be offered to the owner of each parcel or interests. The prices to be
6 offered may not exceed the average of two (2) independent appraisals
7 of fair market value procured by the commission, except that appraisals
8 are not required in transactions with other governmental agencies.
9 However, if the real property is:

10 **(1) one (1) acre or less in size and the fair market value of the**
11 **real property is less than five thousand dollars (\$5,000), a**
12 **qualified employee of the department may make the**
13 **appraisal; or**

14 **(2) less than five (5) acres in size and the fair market value of the**
15 **real property or interest has been appraised by one (1)**
16 **independent appraiser at less than ten thousand dollars (\$10,000)**
17 **the second appraisal may be made by a qualified employee of the**
18 **department.**

19 The prices indicated on the list may not be exceeded unless specifically
20 authorized by the commission under section 7 of this chapter or ordered
21 by a court in condemnation proceedings. The commission may except
22 from acquisition any real property in the area if it finds that such an
23 acquisition is not necessary under the redevelopment plan. Appraisals
24 made under this section are for the information of the commission and
25 are not open for public inspection.

26 (c) Negotiations for the purchase of property may be carried on
27 directly by the commission, by its employees, or by expert negotiators
28 employed for that purpose. The commission shall adopt a standard
29 form of option for use in negotiations, but no option, contract, or
30 understanding relative to the purchase of real property is binding on the
31 commission until approved and accepted by the commission in writing.
32 The commission may authorize the payment of a nominal fee to bind
33 an option, and as a part of the consideration for conveyance may agree
34 to pay the expense incident to the conveyance and determination of the
35 title of the property. Payment for the property purchased shall be made
36 when and as directed by the commission, but only on delivery of proper
37 instruments conveying the title or interest of the owner to "City of
38 _____ for the use and benefit of its Department of Metropolitan
39 Development".

40 (d) Notwithstanding subsections (a) through (c), the commission
41 may, before the time referred to in this section, accept gifts of property
42 needed for the redevelopment of blighted, deteriorated, or deteriorating



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1 areas. The commission may, before the time referred to in this section,
 2 take options on or contract for the acquisition of property needed for
 3 the redevelopment of blighted, deteriorated, or deteriorating areas if the
 4 options and contracts are not binding on the commission or the
 5 redevelopment district until the time referred to in this section and until
 6 money is available to pay the consideration set out in the options or
 7 contracts.

8 (e) Section 15(a) through 15(h) of this chapter does not apply to
 9 exchanges of real property (or interests in real property) in connection
 10 with the acquisition of real property (or interests in real property) under
 11 this section. In acquiring real property (or interests in real property)
 12 under this section the commission may, as an alternative to offering
 13 payment of money as specified in subsection (b), offer for the real
 14 property (or interest in real property) that the commission desires to
 15 acquire:

16 (1) exchange of real property or interests in real property owned
 17 by the redevelopment district;

18 (2) exchange of real property or interests in real property owned
 19 by the redevelopment district, along with the payment of money
 20 by the commission; or

21 (3) exchange of real property or interests in real property owned
 22 by the redevelopment district along with the payment of money by
 23 the owner of the real property or interests in real property that the
 24 commission desires to acquire.

25 The commission shall have the fair market value of the real property or
 26 interests in real property owned by the redevelopment district appraised
 27 as specified in section 15(b) of this chapter. The appraisers may not
 28 also appraise the value of the real property or interests in real property
 29 to be acquired by the redevelopment district. The commission shall
 30 establish the nature of the offer to the owner based on the difference
 31 between the average of the two (2) appraisals of the fair market value
 32 of the real property or interests in real property to be acquired by the
 33 commission and the average of the appraisals of fair market value of
 34 the real property or interests in real property to be exchanged by the
 35 commission.

36 SECTION 4. IC 36-7-15.1-15 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) This section
 38 does not apply to the sale or grant of real property or interests in real
 39 property to nonprofit corporations or neighborhood development
 40 corporations under section 15.1 of this chapter. The provisions of this
 41 section concerning appraisal, publication, and bidding requirements do
 42 not apply to sales, leases, or other dispositions of real or personal

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1 property or interests in property to other public agencies, including the
 2 federal government or any agency or department of the federal
 3 government, for public purposes.

4 (b) Before offering for sale, exchange, or lease (or a combination of
 5 methods) to the public any of the property or interests acquired, the
 6 commission shall cause two (2) separate appraisals of the fair market
 7 value to be made by independent appraisers. However, if the property
 8 is less than five (5) acres in size and the fair market value of the real
 9 property or interest has been appraised by one (1) independent
 10 appraiser at less than ten thousand dollars (\$10,000), the second
 11 appraisal may be made by a qualified employee of the department. In
 12 the case of an exchange, the same appraiser may not appraise both of
 13 the properties to be exchanged. In making appraisals, the appraisers
 14 shall take into consideration the size, location, and physical condition
 15 of the parcels, the advantages accruing to the parcels under the
 16 redevelopment plan, and all other factors having a bearing on the value
 17 of the parcels. The appraisals are solely for the information of the
 18 commission and are not open for public inspection.

19 (c) The commission shall then prepare an offering sheet showing the
 20 parcels to be offered and the offering prices, which may not be less
 21 than the average of the two (2) appraisals. Copies of the offering sheets
 22 shall be furnished to prospective buyers on request. Maps, plats, or
 23 maps and plats showing the size and location of all parcels to be
 24 offered shall also be kept available for inspection at the office of the
 25 department.

26 (d) A notice shall be published in accordance with IC 5-3-1. The
 27 notice must state that at a designated time the commission will open
 28 and consider written offers for the purchase or lease of the property or
 29 interests being offered. In giving the notice it is not necessary to
 30 describe each parcel separately, or to specify the exact terms of
 31 disposition, but the notice:

- 32 (1) must state the general location of the parcels;
- 33 (2) call attention generally to any limitations in the redevelopment
 34 or urban renewal plan on the use to be made of the real property
 35 offered; and
- 36 (3) state that a bid submitted by a trust (as defined in
 37 IC 30-4-1-1(a)) must identify each:
 - 38 (A) beneficiary of the trust; and
 - 39 (B) settlor empowered to revoke or modify the trust.

40 (e) At the time fixed in the notice the commission shall open and
 41 consider any offers received. The offers may consist of consideration
 42 in the form of cash, other property, or a combination of cash and

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1 property. However, with respect to property other than cash, the offer
 2 must be accompanied by evidence of the property's fair market value
 3 that is satisfactory to the commission in the commission's sole
 4 discretion. All offers received shall be opened at public meetings of the
 5 commission and shall be kept open for public inspection.

6 (f) The commission may reject any or all bids or may make awards
 7 to the highest and best bidders. In determining the best bids, the
 8 commission shall take into consideration the following factors:

9 (1) The size and character of the improvements proposed to be
 10 made by the bidder on the real property bid on.

11 (2) The bidder's plans and ability to improve the real property
 12 with reasonable promptness.

13 (3) Whether the real property when improved will be sold or
 14 rented.

15 (4) The bidder's proposed sale or rental prices.

16 (5) The bidder's compliance with subsection (d)(3).

17 (6) Any factors that will assure the commission that the sale or
 18 lease, if made, will further the execution of the redevelopment
 19 plan and best serve the interest of the community, from the
 20 standpoint of both human and economic welfare.

21 (g) The commission may contract with a bidder in regard to the
 22 factors listed in subsection (f), and the contract may provide for the
 23 deposit of surety bonds, the making of good faith deposits, liquidated
 24 damages, the right of reversion or repurchase, or other rights and
 25 remedies if the bidder fails to comply with the contract.

26 (h) After the opening, consideration, and determination of the
 27 written offers filed in response to the notice, the commission may
 28 dispose of all or part of the remaining available property or interests for
 29 any approved use, either at public sale or by private negotiation carried
 30 on by the commission, its regular employees, or real estate experts
 31 employed for that purpose. For a period of thirty (30) days after the
 32 opening of the written offers and determination on them, no sale,
 33 exchange, or lease may be made at a price or rental less than that
 34 shown on the offering sheet, except in the case of sales or rentals of:

35 (1) ten (10) or more parcels to a purchaser or lessee who agrees
 36 to improve the parcels immediately;

37 (2) parcels of property to individuals or families whose income is
 38 at or below the county's median income for individual and family
 39 income, respectively, for the purpose of constructing single family
 40 or two (2) family housing; or

41 (3) parcels of property to a contractor or developer for the purpose
 42 of constructing single family or two (2) family housing for

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1 individuals or families whose income is at or below the county's
 2 median income for individual and family income, respectively;
 3 but after that period the commission may adjust the offering prices in
 4 the manner it considers necessary to further the redevelopment or
 5 urban renewal plan.

6 (i) A conveyance under this section may not be made until the
 7 agreed consideration has been paid, unless the commission adopts a
 8 resolution:

9 (1) stating that consideration does not have to be paid before the
 10 conveyance is made; and

11 (2) setting forth an arrangement for future payment of
 12 consideration or provision of an infrastructure credit against the
 13 consideration, or both.

14 If full consideration is not paid before the conveyance is made, the
 15 commission may use a land sale contract or mortgage to secure
 16 payment of the consideration or may accept as a credit against the
 17 agreed consideration a contractual obligation to perform public
 18 infrastructure work related to the property being conveyed. All deeds,
 19 land sale contracts, leases, or other conveyances, and all contracts and
 20 agreements, including contracts of purchase, sale, or exchange and
 21 contracts for advancements, loans, grants, contributions, or other aid,
 22 shall be executed in the name of the "City of _____, Department
 23 of Metropolitan Development", and shall be executed by the president
 24 or vice president of the commission, ~~or by~~ the director of the
 25 department, **or the director of the department's designee**, if
 26 authorized. A seal is not required on these instruments or any other
 27 instruments executed in the name of the department.

28 SECTION 5. IC 36-7-15.1-15.1 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15.1. (a) As used in this
 30 section, "qualifying corporation" refers to a nonprofit corporation or
 31 neighborhood development corporation that meets the requirements of
 32 subsection (b)(1) and the criteria established by the county fiscal body
 33 under subsection (i).

34 (b) The commission may sell or grant at no cost title to real property
 35 to a nonprofit corporation or neighborhood development corporation
 36 for the purpose of providing low or moderate income housing or other
 37 development that will benefit or serve low or moderate income families
 38 if the following requirements are met:

39 (1) The nonprofit corporation or neighborhood development
 40 corporation has, as a major corporate purpose and function, the
 41 provision of housing for low and moderate income families within
 42 the geographic area in which the parcel of property is located.



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1 (2) The qualifying corporation agrees to cause development that
 2 will serve or benefit low or moderate income families on the
 3 parcel of property within a specified period, which may not
 4 exceed five (5) years from the date of the sale or grant.

5 (3) The qualifying corporation, if the qualifying corporation is a
 6 neighborhood development corporation, agrees that the qualifying
 7 corporation and each applicant, recipient, contractor, or
 8 subcontractor undertaking work in connection with the real
 9 property will:

10 (A) use lower income project area residents as trainees and as
 11 employees; and

12 (B) contract for work with business concerns located in the
 13 project area or owned in substantial part by persons residing
 14 in the project area;

15 to the greatest extent feasible, as determined under the standards
 16 specified in 24 CFR 135.

17 (4) The county fiscal body has determined that the corporation
 18 meets the criteria established under subsection (i).

19 (5) The qualifying corporation agrees to rehabilitate or otherwise
 20 develop the property in a manner that is similar to and consistent
 21 with the use of the other properties in the area served by the
 22 qualifying corporation.

23 (c) To carry out the purposes of this section, the commission may
 24 secure from the county under IC 6-1.1-25-9(e) parcels of property
 25 acquired by the county under IC 6-1.1-24 and IC 6-1.1-25.

26 (d) Before offering any parcel of property for sale or grant, the fair
 27 market value of the parcel of property must be determined by an
 28 appraiser, who may be an employee of the department. However, if:

29 **(1) the property:**

30 **(A) is less than five (5) acres in size; and**

31 **(B) has a fair market value that is less than ten thousand**
 32 **dollars (\$10,000); or**

33 **(2) the commission has obtained the parcel in the manner**
 34 **described in subsection (c);**

35 an appraisal is not required. An appraisal under this subsection is solely
 36 for the information of the commission and is not available for public
 37 inspection.

38 (e) The commission must decide whether the commission will sell
 39 or grant the parcel of real property at a public meeting. In making this
 40 decision, the commission shall give substantial weight to the extent to
 41 which and the terms under which the qualifying corporation will cause
 42 development to serve or benefit families of low or moderate income. If



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1 more than one (1) qualifying corporation is interested in acquiring a
2 parcel of real property, the commission shall conduct a hearing at
3 which a representative of each corporation may state the reasons why
4 the commission should sell or grant the parcel to that corporation.

5 (f) Before conducting a hearing under subsection (e), the
6 commission shall publish a notice in accordance with IC 5-3-1
7 indicating that at a designated time the commission will consider
8 selling or granting the parcel of real property under this section. The
9 notice must state the general location of the property, including the
10 street address if any, or a common description of the property other
11 than the legal description.

12 (g) If the county agrees to transfer a parcel of real property to the
13 commission to be sold or granted under this section, the commission
14 may conduct a hearing to sell or grant the parcel to a qualifying
15 corporation even though the parcel has not yet been transferred to the
16 commission. After the hearing, the commission may adopt a resolution
17 directing the department to take appropriate steps necessary to acquire
18 the parcel from the county and to transfer the parcel to the qualifying
19 corporation.

20 (h) A conveyance of property to a qualifying corporation under this
21 section shall be made in accordance with section 15(i) of this chapter.

22 (i) The county fiscal body shall establish criteria for determining the
23 eligibility of nonprofit corporations and neighborhood development
24 corporations for sales or grants of real property under this section. A
25 nonprofit corporation or neighborhood development corporation may
26 apply to the county fiscal body for a determination concerning the
27 corporation's compliance with the criteria established under this
28 subsection.

29 (j) This section expires July 1, 1999.

30 SECTION 6. IC 36-7-15.1-22.5 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 22.5. (a) The
32 commission may acquire a parcel of real property by the exercise of
33 eminent domain when the following conditions exist:

34 (1) The real property is an unsafe premises (as defined in
35 IC 36-7-9) and is subject to an order issued under IC 36-7-9 or a
36 notice of violation issued by the county's health and hospital
37 corporation under its powers under IC 16-22-8.

38 (2) The real property is not being used as a residence or for a
39 business enterprise.

40 (3) The real property is capable of being developed or
41 rehabilitated to provide affordable housing for low or moderate
42 income families or to provide other development that will benefit

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or serve low or moderate income families.

(4) The blighted condition of the real property has a negative impact on the use or value of the neighboring properties or other properties in the community.

(b) The commission or its designated hearing examiner shall conduct a public meeting to determine whether the conditions set forth in subsection (a) exist relative to a parcel of real property. Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at least ten (10) days before the hearing, and is entitled to present evidence and make arguments at the hearing.

(c) Whenever the commission considers it necessary to acquire real property under this section, it shall adopt a resolution setting out its determination to exercise that power and directing its attorney to file a petition in the name of the city on behalf of the department in the circuit or superior court in the county.

(d) Eminent domain proceedings under this section are governed by IC 32-11.

(e) The commission shall use real property acquired under this section for one (1) of the following purposes:

- (1) Sale in an urban homestead program under IC 36-7-17.
- (2) Sale to a family whose income is at or below the county's median income for families.
- (3) Sale or grant to a neighborhood development corporation or other nonprofit corporation, with a condition in the granting clause of the deed requiring the nonprofit organization to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the county's median income for families. However, a nonprofit organization is eligible for a sale or grant under this subdivision only if the county fiscal body has determined that the nonprofit organization meets the criteria established under subsection (f).
- (4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the county's median income for families.

(f) The county fiscal body shall establish criteria for determining the eligibility of neighborhood development corporations and other nonprofit corporations for sales and grants of real property under subsection (e)(3). A neighborhood development corporation or other nonprofit corporation may apply to the county fiscal body for a determination concerning the corporation's compliance with the criteria

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1 established under this subsection.
2 (g) A neighborhood development corporation or nonprofit
3 corporation that receives property under this section must agree to
4 rehabilitate or otherwise develop the property in a manner that is
5 similar to and consistent with the use of the other properties in the area
6 served by the corporation.
7 ~~(h) This section expires July 1, 1999.~~

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