

**Chapter 11-16**

**BOISE RIVER SYSTEM ORDINANCE**

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**Section 11-16-01.1 Purpose**

It is the purpose of this ordinance to promote the public health, safety and general welfare; to implement the Boise Comprehensive Plan and the Boise River Plan; and to provide for both sensitive development proposals and for comprehensive City review of those proposals.

(5805, Amended, 07/22/1997)

**Section 11-16-01.2 Findings**

- A. That the Boise River is a public asset to the City of Boise and provides a major amenity for its citizens.
- B. That the Boise River Floodplain, Setback Lands and Waters (Sec. 11-16-04), and Class A, B and C lands and waters provide valuable recognized natural resource functions and values associated with the Boise River and an opportunity for wildlife habitat, fisheries, public recreation, and public access.
- C. That prudent preservation, protection and management of the Boise River Floodplain, Setback Lands and Waters and lands and waters classified as Class A, B, and C is necessary to assure the public health, safety and welfare.

**Section 11-16-01.3 Goals**

- A. The Boise River Plan, and the Boise River Fish and Wildlife Habitat Study (Sather-Blair, et al, 1983), established the classification of lands and waters into Classes A, B and C. Section 11-16-03 provides regulations for fish and wildlife habitat associated with the Boise River in each class. Where there is a conflict between the Ordinance and the Plan, the most restrictive provision shall prevail.

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- B. In the years since the Boise River Plan was adopted (1985) developments within the floodplain, changes in federal and state environmental regulations, and a greater recognition of the value of the Boise River by the general public have shown the need to utilize the most current standards and guidelines for development within the Boise River floodplain and for the preservation of recognized natural resource functions and values.
- C. The Boise River Plan has stated four basic goals: Flood protection, fish and wildlife protection and pollution and run-off control, recreation and development opportunities. These four goals are the goals of this Boise River System Ordinance:
1. Flood Protection: Boise City will seek to regulate future development on those lands adjacent to the Boise River in order to allow the river and its adjacent lands to convey the 100-year flood without causing a loss of life or property damage.
  2. Fish and Wildlife: The City intends to regulate all uses within the Boise River floodplain, along Logger's Creek, along and near any man made water amenity located within the 100 year floodplain of the Boise River which flows from or returns to the Boise River System, and in other adjacent lands for the purpose of preserving, protecting, and enhancing the abundance and diversity of fish, wildlife and riparian resources and to utilize natural systems for the control of runoff and pollution to protect the water quality of the Boise River and its tributaries whether natural or man made.
  3. Recreation: The Boise River Greenbelt will continue as a major park system priority which can provide both developed parks and nonmotorized recreational opportunities as well as a natural undeveloped river environment under public ownership.
  4. Development Opportunities: Residential and other urban development shall be located, designed, and undertaken so that there is a continuing enhancement and protection of the amenities along the Boise River which attract businesses and people to the Boise area, including efforts to provide and maintain continuous public access to and along the river which shall include consideration of appropriate facilities for parking of bikes and motor vehicles.

### **Section 11-16-01.4 Definitions**

As used in this Chapter, each of the terms defined shall have the meaning given in the section unless a different meaning is clearly required by the context. (See Section 11-01-03 for additional definitions).

#### **BASE FLOOD:**

The flood having a one percent chance of being equalled or exceeded in any given year: The Base Flood is synonymous with "one-percent flood" and "100 year flood."

#### **BASE ZONE:**

The zoning district classification in effect on any land for which standards are included in the Zoning Ordinance of Boise City, Idaho dated July 1989, and as amended.

**BOISE RIVER PLAN:**

That portion of the Boise Comprehensive Plan titled Boise River Plan which includes both text and river maps.

**BOISE RIVER SYSTEM MANAGEMENT DISTRICT:**

(See Section 11-16-02)

**BUILDABLE SITE:**

A dwelling, commercial, industrial or office, construction site which will not require dikes or rip-rap for protection against flooding.

**CHANNEL:**

The bed and banks of a river, stream, tributary, waterways, etc. (See Appendix 1, Diagram AA)

**CLASS A, B & C LANDS AND WATERS:**

Lands and waters which provide habitats for fish, birds and other wildlife. (See Section 11-16-03, Use Regulations.)

**COMMISSION:**

Boise City Planning and Zoning Commission

**COMPENSATION:**

Restoration of degraded, appropriate enhancement of existing, or creation of new natural resource functions and values.

**COMPENSATION, IN KIND:**

Restoration of degraded, appropriate enhancement of existing, or creation of new natural resource functions and values that are the same as those natural resource functions and values which are impacted by a proposed action.

**COMPENSATION, OUT-OF-KIND:**

Restoration of degraded, appropriate enhancement of existing, or creation of new natural resource functions and values that differ from those impacted by a proposed action.

**CONSTRUCTION:**

Any improvement to real property. In addition to structural construction, the term includes mining, drilling, dredging, grading, paving, excavation, filling and removal of vegetation.

**CUBIC FEET SECOND (CFS):**

Measurement of the rate of flow of water in the river or tributary.

**DEVELOPMENT:**

Any manmade change to improved or unimproved real estate over which the Boise City Council exercises control. In addition to structural construction, the term includes mining, drilling, dredging, grading, paving, excavation, filling, private planting or removal of vegetation.

**ENHANCEMENT:**

Improvement of natural resource functions and values beyond the minimum required for mitigation.

**EXISTING DEVELOPMENT:**

Any development for which an application was submitted prior to the effective date of this Chapter, that has not expired, and was given approval entitling the applicant to proceed with preliminary for final platting, conditional use, building permits or concept plans. An extension of an existing approval after the effective date of this Ordinance does not make such development an existing development.

**FEMA:**

The Federal Emergency Management Agency which is responsible for administering the Federal Flood Insurance Program.

**FLOOD OR FLOODING:**

A general and temporary condition of partial or complete inundation of land areas from the overflow of a watercourse and/or the unusual and rapid accumulation of run-off of surface waters from any source (such as snow melt or heavy rain downpours).

**FLOODPLAIN:**

The lands within Boise City which are subject to flooding from the base flood (100 Year Flood).

**FLOODPLAIN DISTRICT:**

See Chapter 11-12, Floodplain Ordinance.

**FLOODWAY (FW):**

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, as shown in the Flood Boundary and Floodway Map for Boise City, Idaho. (See Appendix 1, Diagram A.)

**FLOODWAY FRINGE (FF):**

The area between the floodway and the boundary of the 100 Year Flood. These lands within Boise City are subject to flooding from the Base Flood (aka the 100 year Flood), and are also referred to as part of the floodplain or the Area of Special Flood Hazard located outside of the floodway. (See Appendix 1/Diagram A.)

**FLOODPLAIN SCHEMATIC:**

See Appendix 1/Diagram a, Stream Corridor Schematic.

**GREENBELT LANDS AND WATERS:**

Land along the Boise River which lies within the seventy foot (70') wide setback area from the 6500 c.f.s. setback line.

**GULCHES, FOOTHILL:**

Regulated gulches are located in the foothills surrounding Boise City and are subject to flash flooding. FEMA or the Boise City Public Works Department have determined floodway and floodway fringe zones. Foothill gulches include, but are not limited to, Seaman's Gulch, Stuart Gulch, Pierce Park Gulch, Polecat Gulch, Crane Creek, Hulls Gulch, Cottonwood Gulch, and Warms Springs Gulch. Gulch floodplains and associated alluvial fans (AO Zones) are regulated under Chapter 12, Floodplain Ordinance when specific flood studies or determinations have been approved by Boise City.

**MAIN CHANNEL:**

That portion of the Boise River that is not defined as a side channel. This includes lands and waters below the high water mark and the 6500 c.f.s. setback line, connection with the main channel of the Boise River and all islands claimed by the State of Idaho.

**MITIGATION:**

Measures to avoid impacts, minimize impacts, restore impacted areas, and compensate for impacts to a natural resource attributable to a proposed action.

**MITIGATION, APPROPRIATE:**

Mitigation which avoids impacts to, minimizes impacts to, restores, or replaces the functions and values of a natural resource, and is consistent with the scope and degree of those impacts attributable to a proposed action.

**MITIGATION, PRACTICAL:**

Mitigation which is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**MITIGATION, SEQUENCE:**

A prescribed procedure for planning mitigation that requires negative impacts to a natural resource attributable to a proposed action to be mitigated. See Section 11-16-06.

**NATURAL RESOURCES:**

All of the plants and animals, and environmental and ecological processes that occur in aquatic, wetland, and riparian and upland environments associated with the Boise River.

**NATURAL RESOURCE FUNCTIONS & VALUES:**

Environmental, ecological, recreational, historic, and cultural benefits attributable to natural resources which occur in aquatic, wetland, and riparian, and upland environments associated with the Boise River. See Section 11-16-06.3. They are further described in the Federal Highway Administration publication titled *A Method for Wetland Functional Assessment* and the US Army Corps of Engineers publication titled *Wetland Evaluation Technique (WET) II*.

**NEW DEVELOPMENT:**

Any development for which an application has been filed on or after the effective date of this Chapter or approval of which has been extended on or after the effective date of this Chapter (July 18, 1993).

**NO-NET-LOSS:**

A measure of the success of mitigation that requires avoidance, minimization, restoration, and compensation of all functions and values of a natural resource impacted by a proposed action.

**NON-RESIDENTIAL STRUCTURE:**

A building other than a residential structure. The term includes but is not limited to buildings used for places of assembly, education, child care, business, maintenance, storage, manufacturing, government, hospitals, sanitariums, nursing homes, hotels and motels.

**ONE-HUNDRED YEAR FLOOD:**

The flood having a one percent (1%) chance of being equalled or exceeded in any given year, and is synonymous with "Base Flood."

**ORDINARY HIGH WATER MARK:**

The Ordinary High Water Mark (OHWM) is the line which the water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. The location of the OHWM is determined on-site by the Idaho Department of Lands for purposes of determining land ownership only.

**PATHS, BICYCLE & PEDESTRIAN:**

Specifically refers to paved bicycle paths or unpaved pedestrian paths built within the Boise River System Management District. Paved bicycle paths shall meet the requirements of the Bicycle/Pedestrian Design Manual for Ada County (1978) and or other appropriate and relative design manuals.

**RIPARIAN AREA:**

All lands within and adjacent to areas of groundwater discharge, or standing and flowing surface waters where the vegetation community is significantly affected by the temporary, seasonal, or permanent presence of water. Examples include springs, seeps, creeks, streams, rivers, ponds, and lakes and their margins.

**RIPARIAN COMMUNITY:**

All plant and animal species within a given riparian area.

**RIPARIAN HABITAT:**

An area where a plant or animal lives; the sum total of environmental conditions in the area. It may also refer to the place occupied by an entire community of plants or animals. (See Appendix 1/Diagrams b,c,d & m).

**RESIDENTIAL STRUCTURE:**

A building used as a dwelling for one or more persons. The term includes, but is not limited to: houses, mobile homes, apartment buildings, lodging homes and dormitories. The term also includes accessory use areas used in conjunction with and forming an integral part of a residential structure.

**SIDE CHANNEL:**

A stream or watercourse, (either natural or manmade) that generally flows from and/or into

the Boise River. This includes waterways developed as amenities in residential or commercial developments.

**6500 CFS SETBACK LINE:**

The line that demarcates the edge of visible moving surface water as determined by the City Engineer in accordance with the following procedures from which the setbacks required in this ordinance are measured:

1. The 6500 cfs setback line shall be based upon a flow of 6500 cfs in the river adjacent to the parcel being reviewed.
2. The 6500 cfs setback line shall only apply to natural channels, including side channels of the Boise River and to man made channels if the man made channel capacity is required in order to pass the 6500 cfs flow under normal flooding conditions.
3. The line shall be the actual location of the water's edge, except in areas of extended shallow backwater with no current. For purpose of definition, shallow shall mean one (1) foot or less in depth.
4. The intent of this definition is to also specifically exclude seeps or other surface waters that are present, but not fed directly from river flows.

**STRUCTURE:**

Anything constructed or erected, which requires permanent location on the ground or is attached to something having location on the ground.

**TRIBUTARY:**

A stream or watercourse, excluding manmade waterways exclusively used for irrigation, which flows into the Boise River. It is not necessary to run year-round.

**UPLAND AREAS:**

Areas within the floodplain that are not defined by the Ordinance as wetlands or riparian areas. See also Natural Resource Functions and Values.

**VARIANCE:**

A grant of relief from the requirements of this Chapter which permits development in a manner that would otherwise be prohibited by this Chapter.

**WETLANDS:**

Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include saturated swamps, marshes, bogs and similar areas. (See Appendix 1/Diagrams aa & d).

**WETLAND, EMERGENT:**

Characterized by erect, rooted, herbaceous hydrophytes, excluding mosses and lichens. This vegetation is present for most of the growing season in most years. These wetlands are usually



dominated by perennial plants. Other common names are marsh and slough.

**WETLAND, SCRUB-SHRUB:**

Wetland areas that are dominated by woody vegetation less than 20 feet tall. The species include true shrubs, young trees, and trees and shrubs that are stunted because of environmental conditions. Includes types such as alder, willows, dogwood and red maple.

**WETLAND, FORESTED:**

Wetland areas characterized by wood vegetation over 20 feet tall and possessing an overstory of trees, an understory of young trees or shrubs and a herbaceous layer.

**WETLAND, RIPARIAN FUNCTIONS & VALUES:**

Recognized wetland and riparian functions and values include water quality protection & improvement, habitat for fisheries & wildlife, nutrient retention & removal, channel stability, food chain support, flood storage & desynchronization, groundwater recharge & discharge, active & passive recreation, aesthetics, and cultural resources. See also: Natural Resource Functions & Values.

(Ord. No. 5459, Enacted, 06/22/93; Ord. No. 5750, Amended, 08/27/96)

**Section 11-16-02 ESTABLISHMENT OF THE BOISE RIVER SYSTEM MANAGEMENT DISTRICT**

- A. There is hereby established and defined a Boise River System Management District. The regulations of this District shall apply to all lands and waters and all aquatic, wetland, riparian and upland environments within the jurisdiction of Boise City that lie:
  - 1. Within the 100-year Floodplain boundaries adjacent to the Boise River, or
  - 2. Within the Setback Lands and Waters (Section 11-16-4), or
  - 3. Within Class A, Class B and Class C areas covered by Section 11-16-3.2, 3.4 and 3.6.
  
- B. The Boise River floodway and floodplain boundaries adjacent to the Boise River are determined by the FEMA Flood Boundary and Floodway Map. A copy of this map is available at the Planning Division of the Planning and Development Services Department. The City Council, Planning Director, or Commission shall make the necessary interpretation of the boundary based upon the recommendation of the City Engineer or other expert(s) retained by the City.
  
- C. Tributary and Foothill Gulch floodplains and associated alluvial fans (AO Zone) standards are addressed in Chapter 12 (Floodplain Ordinance).

(5895, Amended, 02/23/1999)

**Section 11-16-02.1 Boise River System Management District Boundaries; Subdivision Plat Notes; Ordinances and Regulations to Comply With**

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- A. All subdivisions which include land that lies within the floodplain shall have the following note on the face of the plat: "This subdivision includes lands which are in the floodplain and are subject to the regulations of Section 11-12, and 11-16, Boise City Zoning Ordinance. The Planning Division should be consulted for details."
- B. The following ordinances and regulations of uses within the district apply:

<b>Land Classification</b>	<b>Floodplain Ordinance (Chapter 12)</b>	<b>Use Standards of Boise River Ordinance</b>	<b>Mitigation Section of Boise River Ordinance (11-16-6)</b>	<b>Enhancement Section of Boise River Ordinance (11-16-7) (Where Appropriate)</b>	<b>Boise River Development System Permit Required (11-16-5)</b>
Class A	Yes	Yes	Yes	Yes	Yes
Class B	Yes	Yes	Yes	Yes	Yes
Class C	Yes	Yes	No	Yes	Yes

(5895, Amended, 02/23/1999)

**Section 11-16-02.2 Establishment of Base Districts**

The floodplain areas within the jurisdiction of this ordinance are divided into the Floodway and the 100 year Floodway Fringe. The boundaries of these sub-districts are indicated in the Floodway Boundary and Floodway Map studies done by FEMA and dated April 17, 1984 (and future amendments thereof), or other studies officially adopted by Boise City. (See Appendix 1, Diagram A Floodplain Cross Section and Section 11-16-2).

**Section 11-16-02.3 Standards for Uses within the Floodplain (Floodway and Floodway Fringe) zones**

General standards for development proposals planned for these areas are found in Chapters 12 and 16, Boise Zoning Ordinance.

(Ord. No. 5459, Enacted, 06/22/93; Ord. No. 5750, Amended, 08/27/96)

**Section 11-16-03 BOISE RIVER SYSTEM MANAGEMENT DISTRICT: CLASS A, B & C LANDS & WATERS; USE REGULATIONS**

**Section 11-16-03.1 Establishment of Class A, B & C Lands and Waters**

This chapter shall apply to all Class A, B, and C lands and waters located within the boundaries of the 100-year floodplain adjacent to the Boise River, to Setback Lands and Waters described in Section 11-16-04, and other Class A lands and waters described in Section 11-16-03.2.

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- A. Lands and waters which provide natural resource functions and values including the preservation of fish and wildlife amenities shall be referred to as Class A, B or C lands.
- B. Adopted as part of this chapter is a set of master maps delineating Class A, B & C lands and waters. These official maps can be reviewed at the Planning and Development Services Department. The precise boundaries of those lands and waters shall be determined on a case-by-case basis. The map boundaries must be interpreted using more detailed information including:
  - 1. The Boise River Fish & Wildlife Habitat Study (Sather-Blair, et al, 1983) and corresponding field maps.
  - 2. On-site field inspections and surveys classifying the area by its U.S. Fish & Wildlife Service habitat classification and utilizing the criteria established in the cited Boise River Fish & Wildlife Habitat Study (1983).
  - 3. The definitions of Class A, B and C habitat (Section 11-16-03).
  - 4. Aerial photographs.
  - 5. The official floodplain maps and studies prepared by FEMA.
  - 6. Government agencies having resource responsibilities such as the U.S. Army Corps of Engineers, Idaho Department of Water Resources, Idaho Fish and Game Department, Idaho Department of Lands, U.S. Fish & Wildlife Service, and the Environmental Protection Agency.
- C. The Boise River Fish and Wildlife Habitat Study, (Sather-Blair, et al, 1983), shall be used as a reference which provides objectives for preservation and management actions for Class A (I-Areas Extremely Important for Preservation) and Class B (II-Areas Moderately Important for Preservation) areas. (See Appendix 4, Table 14, Suggested Management Actions and Objectives for Maintaining or Enhancing Fish & Wildlife Habitat Along the Boise River).

(5895, Amended, 02/23/1999)

### **Section 11-16-03.2 Class A Lands & Waters**

- A. Class A lands and waters are areas which provide extremely important habitats for fish and wildlife and for flood control and protection. The objective for these lands is to preserve and protect them for their primary benefits to fish and wildlife in general, and to protect bald eagle, great blue heron, trout, and water fowl habitats in particular. These areas include, but are not limited to:
  - 1. Floodways;

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2. Areas with a high degree of plant community diversity;
  3. Black cottonwood riparian plant community;
  4. Riparian forests
  5. Scrub-shrub wetlands;
  6. Emergent wetlands within the floodplain (exclusive of working irrigation canals);
  7. Great Blue Heron rookeries and 300 ft. around them;
  8. Eagle winter habitat which includes lands within 200 ft. of the 6500 c.f.s. line east of Walnut Street on the north side of the river and east of Phase 4 of the River Run Subdivision on the south, and forested wetlands east of these points;
  9. Lands within the riparian setback Lands and Waters (Section 11-16-04.2(D));
  10. The banks of side channels and tributary stream areas within the jurisdiction of this Chapter.
  11. Islands within the river;
  12. Trout spawning waters;
  13. Riparian areas of tributary streams within the jurisdiction of this Chapter including channels that convey floodwaters and areas that meet the definition of wetlands;
  14. The Barber Pool Natural Preserve.
- B. Class A Land & Water Uses: The Class A land and water uses below are subject to the relevant Standards for Uses (Section 11-16-03.3) and Mitigation and Enhancement provisions (Sections 11-16-06 & 07) and shall require a Boise River System Development Permit (Section 11-16-05).
1. Signs (Non-Commercial), restrooms and snackbars; except for existing uses;
  2. River Bridges and paved access to River Bridge;
  3. Fish & wildlife habitat improvements;
  4. Irrigation weirs, diversion dams, and inlets;
  5. Water inlets to supply domestic water;
  6. Greenbelt structures under existing bridges;
  7. Greenbelt paths or non-paved pedestrian paths which may provide limited access

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to the river and may run into or through lands designated as Class A habitat areas. Paved bicycle paths may not run into or through Class A habitat areas, other than those already in existence, the planned for Lander Street sewage treatment plant path, the Warm Springs park area pedestrian path and bridge, and where an existing railroad right-of-way is already located in said area which may be acquired, donated or used as a bicycle path.

8. Natural parks;
  9. Bank and channel stabilization projects;
  10. Hydro-electric and flood protection dams;
  11. Selected public piers and beaches.
  12. Public utility lines such as water and sewer lines;
  13. Storm drain outlets and detention basins;
  14. Water pump facilities.
  15. Gravel extraction; including reuse of gravel extraction lands.
  16. One housing unit per 20 acres or legal non-conforming lot;
  17. Agricultural uses;
  18. Uses required by the Americans with Disabilities Act.
- C. Prohibited Uses: All uses not explicitly listed under Section 11-16-03.2.

### **Section 11-16-03.3 Standards for Uses on Class A Lands and Waters**

- A. All Class A areas within a development or subdivision shall be preserved and shall be platted in single common ownership. A method of preservation, either through conservation easement or other method, may be required by the City.
- B. All new development shall be located and designed to promote the Flood Protection, Fish & Wildlife, Recreation and other goals of the Boise City Comprehensive Plan and the Boise River Plan.
- C. Riparian Setback Lands and Waters shall be preserved or created in accordance with Section 11-16-04.2D.
- D. The removal of vegetation (living or dead) from within the floodway shall not be permitted unless:

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1. The vegetation poses a threat to persons or property.
  2. The vegetation contributes to a dangerous restriction of the flow of floodwater.
  3. The removal of vegetation is part of an approved mitigation and enhancement plan (Section 11-16-06 and 11-16-07).
- E. Removal of vegetation shall be confined to the minimum necessary, while still maintaining the natural riparian areas. Removal of vegetation is subject to approval by the Planning Director after review and recommendation by the Urban Forestry Division of the Boise City Parks and Recreation Department.
- F. Emergency situations under D.1 and 2 above may require actions to be taken before the Planning Director can be contacted. If that is the case, then the action taken shall be reported to the Planning Director and mitigation efforts shall be taken if the Director requires them.
- G. In recognition of their importance and their scarcity, emergent wetlands shall be preserved. In the case of isolated emergent wetlands surrounded by Class B or Class C lands, the emergent wetland area may be replaced with a created emergent wetland, with the same functions and values as the impacted wetland, on a one-to-one replacement basis. The newly created emergent wetland area shall be designed as Class A land and shall be governed as such. The emergent wetland may be relocated anywhere on the project site, except within Class C Lands, provided that the created emergent wetland has the same or greater degree of natural resource functions and values as did the impacted emergent wetland. In order to assure a no-net loss of natural resource functions and values to relocating an emergent wetland, the applicant shall include an assessment of the emergent wetland relocation as part of their mitigation plan, as required in Section 11-16-6 of this ordinance. Additionally, if the emergent wetland is relocated to a site within existing Class A lands, then the land area of Class A Lands and Waters shall be enlarged by an amount no less than the size of the impacted emergent wetland. This area shall be designed as Class A land, and be governed as such.
- H. Where side channels to the Boise River are identified by the Idaho Fish & Game Department as trout spawning and/or rearing waters, development proposals shall be designed to protect and enhance such areas. Development proposals may also be made to preserve, enhance, improve or create such trout spawning and/or rearing waters with the approval of the Planning Director or Commission after consultation with the Idaho Department of Fish & Game.
- I. All new developments and/or subdivisions within all classes of lands (Section 11-16-03) that propose to use or create a water amenity shall design all or part of that water amenity to provide appropriate wetland and riparian functions and values such as waterfowl and wildlife habitat, trout and/or warm water fish habitats. The Planning Director or Commission may approve the design after consultation with the Idaho Fish & Game Department, the Boise Public Works Department, and the Boise City Parks and Recreation Department. Guidelines for development of Tier 1, Tier 2, Tier 3 and for urban ponds are listed in; "Grunder, S., T. Holubetz and S. Gebhards. 1991. Riparian and

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Aquatic Development Standards Recommended for Urban Water Systems for Fish and Wildlife Benefits. Idaho Department of Fish and Game. Boise, Idaho" (see Appendix 6). The setback distances are minimum standards and may be increased where needed to provide sufficient protection to the banks and wildlife habitat. Any water amenity placed in a development shall have in place an acceptable maintenance plan approved by Boise City and the Idaho Fish and Game Department for the preservation and maintenance of the amenity in the future.

- J. In the design of public and private parks, intense activity portions of the park shall be located outside of Class A lands and designed to prevent adverse impacts on Class A lands.
- K. Open spaces such as parks, golf courses, greenbelt areas, parking lots, etc., within the floodplain, shall be designed and operated so that they may flood and provide storage capacity for waters during flood flows in excess of 6500 cfs. Levees or berms shall not be used for flood control.
- L. Where construction activities abut a riparian area, to prevent intrusion of construction activities or other impacts on the riparian area, construction fencing shall be installed before any grading or other construction activities commence .
- M. Emergency access to the river for the use of repair and rescue equipment and personnel shall be provided at appropriate intervals along the river. Any new development proposal shall include provisions for emergency access.
- N. Manicured landscaping and/or lawns shall not be placed in these Class A areas and any person, entity or organization violating this section shall be required to replant any area which is destroyed or invaded by such landscaping activities.
- O. Developments shall provide public access to the Boise River Greenbelt Setback as a part of their development plan. In appropriate cases, the developer shall either provide or make available for purchase by the City, land for public parking for bicycle and motor vehicles.

(5805, Amended, 07/22/1997)

### **Section 11-16-03.4 Class B Lands & Waters**

- A. Class B Lands and Waters are areas which provide a good potential for improvements to natural resource functions and values. The objective for these lands is to invite development plans which demonstrate improvement to natural resource functions and values and mitigate negative impacts to existing natural resource functions and values. Class B Lands and Waters include, but are not limited to:
  - 1. Agricultural lands.
  - 2. Gravel pit ponds and small lakes

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3. Intermittent tributary streams
  - B. Class B Land & Water Uses: Class B land and water uses are limited to the uses allowed in the underlying zone and are subject to the relevant Standards for Uses (Section 11-16-03.5) and Mitigation and Enhancement Provisions (Sections 11-16-06 & 07). These uses include open space and Greenbelt uses which will not cause environmental damage .
  - C. Conditional Uses: Class B land and water conditional uses include all conditional uses listed in the underlying base zone. These uses are subject to the relevant Standards for Uses (Section 11-16-03.5) and Mitigation and Enhancement provisions, (Sections 11-16-06 & 07) and shall require a Boise River System Development Permit (Section 11-16-05).
  - D. Prohibited Uses: All uses not explicitly listed under Sections 11-16-03.4.B and C.

### **Section 11-16-03.5 Standards for Class B Lands**

- A. All Class B areas within a new development shall be located and designed to promote the Flood Protection, Fish & Wildlife, Recreation, Development Opportunities and other goals of the Boise City Comprehensive Plan and the Boise River Plan.
- B. Development plans shall demonstrate improvements to natural resource functions and values and shall mitigate negative impacts to existing natural resource functions and values. Developments within Class B lands may include components which will enhance the value of natural resource functions and values. Examples of enhancement components are:
  1. The creation of wetland and lake habitats.
  2. The provision of nesting areas for song birds and waterfowl.
  3. Planting of riparian vegetation, and improvements to the fishery.
- C. In recognition of their importance and their scarcity, emergent wetlands shall be preserved. In the case of isolated emergent wetlands surrounded by Class B or Class C lands, the emergent wetland area may be replaced with a created emergent wetland, with the same functions and values as the impacted wetland, on a one-to-one replacement basis. The newly created emergent wetland area shall be designed as Class A land and shall be governed as such. The emergent wetland may be relocated anywhere on the project site, except within Class C Lands, provided that the created emergent wetland has the same or greater degree of natural resource functions and values as did the impacted emergent wetland. In order to assure a no-net loss of natural resource functions and values to relocating an emergent wetland, the applicant shall include an assessment of the emergent wetland relocation as part of their mitigation plan, as required in Section 11-16-6 of this ordinance. Additionally, if the emergent wetland is relocated to a site within existing Class A lands, then the land area of Class A Lands and Waters shall be enlarged by an amount no less than the size of the impacted emergent wetland. This area shall be



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designed as Class A land, and be governed as such.

- D. Riparian setback lands and waters shall be preserved or created in accordance with Section 11-16-04.2.D.
- E. All new developments and/or subdivisions within all classes of lands (Section 11-16-03) that propose to use or create a water amenity shall design all or part of that water amenity to provide appropriate wetland and riparian functions and values such as waterfowl and wildlife habitat, trout and/or warm water fish habitats. The Planning Director or Commission may approve the design after consultation with the Idaho Fish & Game Department, the Boise Public Works Department, and the Boise City Parks and Recreation Department. Guidelines for development of Tier 1, Tier 2, Tier 3 waterways and for urban ponds are listed in: "Grunder, S., T. Holubetz and S. Gebhards. 1991. Riparian and Aquatic Development Standards Recommended for Urban Water Systems for Fish and Wildlife Benefits. Idaho Department of Fish and Game. Boise, Idaho" (see Appendix 6). The setback distances are minimum standards and may be increased where needed to provide sufficient protection to the banks and wildlife habitats. Any water amenity placed in a development shall have in place an acceptable maintenance plan approved by Boise City and the Idaho Fish and Game Department for the preservation and maintenance of the amenity in the future.
- F. In the design of public and private parks, intense activity portions of the park shall be located in Class B and C lands and designed to prevent adverse impacts on Class A lands.
- G. Open spaces such as parks, golf courses, greenbelt areas, parking lots, etc., within the floodplain, shall be designed and operated so that they may flood and provide storage capacity for waters during flood flows in excess of 6500 cfs. Levees or berms shall not be used for flood control.
- H. Where construction activities abut a riparian area, to prevent intrusion of construction activities or other impacts on the riparian area, construction fencing shall be installed before any grading or other construction activities commence.
- I. Emergency access to the river for the use of repair and rescue equipment and personnel shall be provided at appropriate intervals along the river. Any new development proposal shall include provisions for emergency access.
- J. Where side channels to the Boise River are identified by the Idaho Fish & Game Department as trout spawning and/or rearing waters, development proposals shall be designed to protect and enhance such areas. Development proposals may also be made to preserve, enhance, improve or create such trout spawning and/or rearing waters with the approval of the Planning Director or Commission after consultation with the Idaho Department of Fish & Game.
- K. Manicured landscaping and/or lawns shall not be placed in these riparian areas and any person, entity or organization violating this section shall be required to replant any area which is destroyed or invaded by such landscaping activities.

- L. Developments shall provide public access to the Boise River Greenbelt setback as a part of their development plan. In appropriate cases, the developer shall either provide or made available for purchase by the City, land for public parking for bicycle and motor vehicles.

(5805, Amended, 07/22/1997)

**Section 11-16-03.6 Class C Lands**

- A. Class C lands are areas which are the least important for preservation. They provide limited fish and wildlife habitat and there is limited potential for enhancement because of incompatibility with other uses. The objective for these lands is to invite development plans which provide for landscaping and other habitat improvements. These areas include, but are not limited to:
  - 1. Public and private parks where current uses preclude enhancement of fish and wildlife habitat.
  - 2. Diversion dams.
  - 3. Residential and commercial developments, except that plantings may include native or naturalized plant materials that provide wildlife food and shelter.
  - 4. Lands surrounding gravel ponds.
  - 5. Subdivided properties.
  - 6. Former industrial areas.
  - 7. Vacant lands in urban centers.
- B. Class C Land and Water Uses: Class C area uses include all uses permitted in the base zone. These uses are subject to the relevant Standards for Uses (Section 11-16-03.7) and Enhancement Provision (Section 11-16-07) and shall require a Boise River System Development Permit (Section 11-05-05).
- C. Conditional Uses: Class C area conditional uses include all conditional uses in the base zone subject to the relevant Standards for Uses (Section 11-16-03.7) and Enhancement Provision (Section 11-16-07) and shall require a Boise River System Development Permit (Section 11-16-05).

**Section 11-16-03.7 Standards for Class C Lands**

- A. All new development shall be located and designed to promote the Flood Protection, Fish & Wildlife, Recreation, Development Opportunities and other goals of the Boise City Comprehensive Plan and the Boise River Plan.
- B. Where side channels to the Boise River are identified by the Idaho Fish & Game

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Department as trout spawning and/or rearing waters, development proposals shall be designed to protect and enhance such areas. Development proposals may also be made to preserve, enhance, improve or create such trout spawning and/ or rearing waters with the approval of the Planning Director or Commission after consultation with the Idaho Department of Fish & Game.

- C. In recognition of their importance and their scarcity, emergent wetlands shall be preserved. In the case of isolated emergent wetlands surrounded by Class B or Class C lands, the emergent wetland area may be replaced with a created emergent wetland, with the same functions and values as the impacted wetland, on a one-to-one replacement basis. The newly created emergent wetland area shall be designed as Class A land and shall be governed as such. The emergent wetland may be relocated anywhere on the project site, except within Class C Lands, provided that the created emergent wetland has the same or greater degree of natural resource functions and values as did the impacted emergent wetland. In order to assure a no-net loss of natural resource functions and values to relocating an emergent wetland, the applicant shall include an assessment of the emergent wetland relocation as part of their mitigation plan, as required in Section 11-16-6 of this ordinance. Additionally, if the emergent wetland is relocated to a site within existing Class A lands, then the land area of Class A Lands and Waters shall be enlarged by an amount no less than the size of the impacted emergent wetland. This area shall be designed as Class A land, and be governed as such.
- D. All new developments and/or subdivisions within all classes of lands (Section 11-16-03) that propose to use or create a water amenity shall design all or part of that water amenity to provide appropriate wetland and riparian functions and values such as waterfowl and wildlife habitat, trout and/or warm water fish habitats. The Planning Director or Commission may approve the design after consultation with the Idaho Fish & Game Department, the Boise Public Works Department and the Boise City Parks and Recreation Department. Guidelines for development of Tier 1, Tier 2, Tier 3 and urban waterways are listed in: "Grunder, S., T. Holubetz and S. Gebhards. 1991. Riparian and Aquatic Development Standards Recommended for Urban Water Systems for Fish and Wildlife Benefits. Idaho Department of Fish and Game. Boise, Idaho" (see Appendix 6). The setback distances are minimum standards and may be increased where needed to provide sufficient protection to the banks and wildlife habitat. Any water amenity placed in a development shall have in place an acceptable maintenance plan approved by Boise City and the Idaho Fish and Game Department for the preservation and maintenance of the amenity in the future.
- E. In the design of public and private parks, intense activity portions of the park shall be located in Class B and C lands and designed to prevent adverse impacts on Class A lands.
- F. Open spaces such as parks, golf courses, greenbelt areas, parking lots, etc., within the floodplain, shall be designed and operated so that they may flood and provide storage capacity for waters during flood flows in excess of 6500 cfs. Levees or berms shall not be used for flood control.
- G. Where construction activities abut a riparian area, to prevent intrusion of construction activities or other impacts on the riparian area, construction fencing shall be installed

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before any grading or other construction activities commence.

- H. Emergency access to the river for the use of repair and rescue equipment and personnel shall be provided at appropriate intervals along the river. Any new development proposal shall include provisions for emergency access.
- I. Development plans shall provide for landscaping and other habitat improvements, and shall include vegetation screens and buffer zones that provide appropriate separation between uses (such as residential housing area and wildlife habitat area) and yet allow the development to benefit from its proximity to open space areas.
- J. Manicured landscaping and/or lawns shall not be placed in these riparian areas and any person, entity or organization violating this section shall be required to replant any area which is destroyed or invaded by such landscaping activities.
- K. Developments shall provide public access to the Boise River Greenbelt Setback as a part of their development plan. In appropriate cases, the developer shall either provide or make available for purchase by the City, land for public parking for bicycle and motor vehicle.

(Ord. No. 5459, Enacted, 06/22/93; Ord. No. 5750, Amended, 08/27/96)D. Prohibited Uses: All uses not explicitly listed under 11-16-03.6.B and C. (5805, Amended, 07/22/1997)

### **Section 11-16-04 SETBACK LANDS AND WATERS**

Setback lands and waters are lands and waters which are set aside for the protection and preservation of the Greenbelt; Heron rookeries; Eagle perching, feeding and loafing areas and Riparian areas.

#### **Section 11-16-04.1 Setback Lands and Water Uses**

- A. Setback Lands and Water Uses: Setback lands and water uses are limited to open space uses which do not require any development or structures. These uses shall not cause flood losses on other lands, to the public, or to the environment.
- B. Setback Lands and Waters Conditional Uses: Setback Lands and Waters conditional uses are open space uses which require development or structures, provided they receive a Boise River System Development Permit (Section 11-16-05), meet the criteria for evaluation in Section 11-16-05.4 and comply with conditions imposed from Section 11-16-05.7.

#### **Section 11-16-04.2 Setback Lands and Water Standards**

- A. Greenbelt Setback Lands and Waters: The Greenbelt Setback Lands and Waters area is a minimum seventy foot (70') setback (measured landward) from the 6500 c.f.s. setback line for all structures, driveways, manicured landscaping and parking areas and shall be reserved for greenbelt purposes. These areas shall be maintained in the Boise River

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System to provide lands for the: protection of wildlife, for bank protection, a holding area for flood waters, and protection of recognized natural resource functions and values. Based on site specific recommendations from the Board of Park and Recreation Commissioners, the above setback requirements may be waived, reduced or increased by the Planning and Zoning Commission or City Council. The Board of Park and Recreation Commissioners shall set forth specific findings of fact supporting their recommendations. Waived, reduced or increased setback requirements may be required to ensure a project will:

1. Maintain water quality,
  2. Maintain the safety of the greenbelt corridor and path,
  3. Mitigate noise impacts,
  4. Protect Bald Eagle perch trees,
  5. Conserve aesthetic features within the greenbelt corridor as viewed from within the corridor,
  6. Preserve views of significant cultural or geologic landmarks as seen from within the greenbelt corridor, or
  7. Address other special and unique characteristics of the site, building, or use consistent with the purposes of the Boise River System Ordinance.
- B. Heron Rookeries Setback Lands and Waters: The Great Blue Heron Rookeries Setback lands and Waters area is in the area of the rookery and three hundred feet (300') around it or them in all directions. Specific rookery areas shall be designated by the City after consultation with the Idaho Fish and Game Department.
- C. Eagle Perching, Feeding & Loafing Setback Lands and Waters: The eagle perching, feeding & loafing Setback Land and Water areas are designated as bald eagle winter habitat and include all lands within two hundred feet (200') of the 6500 c.f.s. east of Walnut Street along the north side of the Boise River, and east of Phase 4 of the River Run Subdivision along the south side of the Boise River.
- D. Riparian Setback Land and Water: The Riparian Setback Lands and Water area are land strips of rooted vegetation (trees grasses and shrubs) used for the protection of banks and/or wildlife habitat and shall be maintained where in existence or where was created where none existed. This Riparian Setback as modified here is adopted from "S. Grunder, T. Holubetz, and S. Gebhards, 1991. Riparian and Aquatic Development Standards Recommended for Urban Water Systems for Fish and Wildlife Benefits. Idaho Department of Fish & Game. Boise, Idaho." December 1991. The setback distances set out below are minimum standards and may be increased where needed to provide sufficient protection of the banks and/or wildlife habitat (see Appendix 6). Manicured landscaping will not take place within the riparian setback.

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1. Tier 1 Waterway: A side channel with a width of less than 15 ft. or with a flow of less than 5 c.f.s. shall have a riparian setback ranging from 10 feet to 20 feet. The riparian setback shall provide for a minimum of 45% of the stream channel adjacent to any lot to consist of overhanging vegetation.

Classification as a Tier 1 waterway may be granted in the sole discretion of the City Council upon recommendation of the Planning and Zoning Commission if the Council finds the channel is 15' feet or less in width, its flow is 5 CFS or less at all times of year, and the Council makes a specific finding that the amenity is being created as a part of an integrated waterway system using a combination of Tier 1, Tier 2 and Tier 3 streams in conjunction with an integrated mitigation and enhancement plan.

2. Tier 2 Waterway: A side channel with a width of greater than 15 ft. or with a flow of between 5 c.f.s. and 150 c.f.s. shall have a riparian setback of not less than 25 ft.
3. Tier 3 Boise River: The riparian setback for the Boise River shall cover a minimum of 25 ft. from the Boise River 6,500 c.f.s. setback line.

A minimum 15 feet building setback line from the edge of the Riparian Setback shall be maintained to provide lawn and patio areas between the structure and the setback line.

- E. Stabilization Measures: In situations where structural stabilization measures (rip-rap, drop structures, large cobble) are deemed necessary, the design of the structural stabilization measure shall include over-planting with shrubs and trees and the deliberate enhancement of fish habitat. Use of dangerous and unsightly materials such as automobiles, chunks of concrete, and debris shall be prohibited (see Appendix 6).
- F. Screening Requirements: Structures shall be screened from view from the Boise River Greenbelt and the Boise River with a landscaping screen which must, within a period of ten (10) years, have the capability of growing to a height of at least twenty (20) feet. Parking areas located between the structure and the Boise River shall be screened from view from the Boise River and the Boise River Greenbelt at the time of construction by landscaping or decorative fencing having a minimum height of five (5) feet. Based on recommendations from the Board of Park and Recreation Commissioners, the above landscaping requirements may be waived, reduced or increased by the Planning and Zoning Commission or the Design Review Committee. Waived, reduced or increased landscaping requirements may be permitted in order to:
  1. Promote public safety and security for greenbelt users,
  2. Minimize greenbelt pathway site distance conflicts,
  3. Reduce potential greenbelt and pathway use conflicts, or
  4. Address special and unique characteristics of the site, building or use consistent with the purposes of the Boise River System Ordinance.

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The Board of Park and Recreation Commissioners shall set forth specific findings of fact to support a recommendation to waive, reduce or increase landscape requirements.

- G. **Minimum Setbacks:** Minimum setback for all structures and parking areas shall be seventy (70) feet (measured horizontally) from the 6500 c.f.s. line of the Boise River, or five (5) feet (measured horizontally) from the boundary of all dedications or easements granted to the City of Boise for greenbelt purposes in excess of sixty-five (65) feet as herein provided.

(Ord. No. 5459, Enacted, 06/22/93; Ord. No. 5750, Amended, 08/27/96)  
(5916, Amended, 05/18/1999)

### **Section 11-16-05 BOISE RIVER SYSTEM DEVELOPMENT PERMIT**

#### **Section 11-16-05.01 Applicability, Application Requirement, Application and Fees, Existing Developments, Concurrent Review**

- A. **Applicability:** A Boise River System Development Permit shall be required for all developments within the Boise River System Management District (Section 11-16-02). Developments within the Boise River System Management District shall also be simultaneously reviewed to comply with Chapter 12, Floodplain Ordinance.
- B. **Application and Fees:** Every person seeking a Boise River System Development Permit shall submit an application and fee with the Planning Director in accordance with Sections 11-16-05.2 and 11-03-03 of the Zoning Ordinance. The Boise River System Development Permit application shall be on a form prescribed by the Planning Director. It shall include a Floodplain Review (Chapter 12) and a mitigation and/or enhancement plan in accordance with Section 11-16-06 & 07. Information and plans required to be submitted are listed on the application form for a Boise River System Development Permit (Section 11-16-05). Action by the Planning Director or Commission on the application shall not be initiated until the application is deemed by the Planning Director to be completed.

As part of the Boise River System Development Permit all developments which are adjacent to, or include all or part of the Greenbelt Setback Lands and Waters as specified in Section 11-16-4.2A shall have the application to Boise City be reviewed by the Board of Park and Recreation Commissioners for their recommendations.

- C. **Conceptual Applications:** Boise River System Permit applications may be submitted for conceptual or detailed approval. For conceptual applications, the applicant must specify on the application form that concept approval is being requested and must be accompanied by any entitlement application required for the intended use. A concept approval is a statement by the City of Boise that a general development plan including the general arrangement of uses, open spaces, location of streets and other infrastructure, etc. is acceptable. A concept review allows the applicant to obtain approval of a general development plan without incurring the expense of preparing detailed plans and studies until after the concept approval. It provides the developer and Boise City with guidelines

for the design of each phase of a project. Supporting information shall be required for concept applications as determined by the Planning Director but shall minimally include the location of floodway and floodplain boundaries, the 6500 cfs flow line, greenbelt (70') and eagle habitat (200') setbacks, and visible wetlands and surface features. Each phase of a concept approval requires a detailed Boise River System permit.

- D. Existing Development: A Boise River System Development Permit is not required on individual lots within an existing development or development which has already received a Boise River System Development Permit. A new permit will be required if a previously approved plan and/or conditions are being extended or modified or if new work is proposed within the floodway. Building permits and review by Public Works and Boise City Parks and Recreation Department will continue to be required.
- E. A Boise River System Development Permit may be reviewed concurrently with other zoning and development applications requiring Commission action.

(5916, Amended, 05/18/1999)

**Section 11-16-05.02 Level of Review**

The following two levels of review for a Boise River System Development Permit are hereby established. The Planning Director shall decide the appropriate review procedure for each application filed consistent with the applicable requirements of this ordinance.

- A. Administrative level Review Procedures:
  - 1. This procedure can be followed for development on a single parcel or single lot when the proposed project:
    - a. Does not affect more than 100 lineal feet of river bottom or bank, nor more than one-half (1/2) acre of Class A or B lands, and,
    - b. Does not materially alter, fully restores, or enhances the existing surface and groundwater hydrology, soils, plant and animal communities and habitats present within or adjacent to the project are, and,
    - c. Provides for the maintenance of storm water detention/sedimentation basins and stabilization structures.
  - 2. The Planning Director shall review the application and approve, disapprove or may direct that it be sent to the Commission for review and decision at a public hearing. The Planning Director shall cause all surrounding property owners to be notified, shall receive input from the City Engineer and other governmental agencies, and shall review the information from the completed application. The procedures for notification by publication and mail shall be followed. (Section 11-16-05.3).
  - 3. A decision on an administrative level review shall be made within thirty (30) days of the receipt of the completed application, unless forwarded to the Commission, and shall be based on the criteria of evaluation included in Section 11-16-05.4.



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Conditions may be attached to the approval as allowed in Section 11-16-05.7. Approval from the Idaho Department of Water Resources and the Army Corp of Engineers must also be received, if appropriate, before a permit will be issued.

4. The applicant or any aggrieved party may appeal to the Commission a decision of the Planning Director by following the general procedure in Section 11-03-07.1 of the Boise City Zoning Ordinance.
- B. Commission Level Review Procedures:
1. The Planning & Zoning Commission shall review all applications, except those undergoing administrative level review by the Planning Director.
  2. The Planning Director may require a pre-application public worksession and extended review period (based upon the complexity of the application) prior to the public hearing.
    - a. A pre-application public worksession shall be held no later than thirty-three calendar days after acceptance of a Preliminary Site Plan, Preliminary Mitigation and/or Preliminary Enhancement Plan. Deferrals shall extend the time during which the worksession must be held.
    - b. A public hearing shall be held no later than sixty-six calendar days after acceptance of a completed application. Deferrals shall extend the time during which the hearing must be held.
    - c. Upon the determination of the Planning Director that an application is unusually complex and requires additional review, the date for the public worksession and for public hearing may be each extended up to thirty-three (33) additional days. This extended review period is to allow for adequate staff research and analysis, agency review and comment, public input, coordination with other city departments and coordination with the applicant.
  3. The Planning & Zoning Commission shall hold a public hearing and give notice of hearing for applications for a Boise River System Development Permit (as provided in Section 11-16-05). The Planning & Zoning Commission shall either approve, deny or modify the proposed development for the issuance of a permit within fourteen (14) days after the final hearing date. The decision shall be based upon the criteria of Section 11-16-05.4 and the Conclusions of Law of Section 11-16-5.6. Appropriate conditions shall be attached to their decision as allowed by Section 11-16-05.7.
  4. The applicant or any aggrieved party may appeal the Planning & Zoning Commission's decision to the City Council in accordance with Section 11-03-07.2.

### **Section 11-16-05.03 Notification**

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- A. For both administrative and Commission level review, notification shall be given to property owners and residents located on both sides of the river or channel for 500 ft. upstream and 1,000 ft. downstream from the proposed work site. Notification on administrative actions shall be done following a decision to approve, to inform persons of their right to appeal.
- B. The Planning Division may also notify known interested parties such as organized neighborhoods, public agencies, environmental organizations, city departments, etc. Failure to notify any party claiming to be an interested party shall not require deferral of the scheduled hearing or for invalidation of the decision.

(5895, Amended, 02/23/1999)

### **Section 11-16-05.04 Criteria for Evaluation**

Evaluation of the application shall be done administratively or by the Commission (Section 11-16-5.2) using criteria for evaluation in Sections 11-16-5.4 and establishing Conclusions of Law as specified in Section 11-16-5.6. Conditions of approval as allowed in Section 11-16-5.7 may be attached to an approved Boise River System Development Permit. The applicant shall demonstrate that the criteria in these regulations have been satisfied. The Planning Director or Commission shall consider the following, as well as the standards specified in other sections of this ordinance:

- A. The development shall comply with the goals, purposes and standards of the Boise River System Ordinance (Section 11-16-01.2), the Boise River System Development Permit (11-16-05), the Boise City Zoning Ordinance (11-05), Boise Metropolitan Plan and the Floodplain Ordinance (Chapter 12).
- B. If a mitigation and/or enhancement plan is submitted with the application as specified in Sections 11-16-06 and 07, a technical evaluation by expert(s) and/or agencies designated by the City shall be performed and provided to the Commission for consideration and approval. The Commission shall evaluate the suitability of the proposed use, mitigation and/or enhancement plans in relation to the flood hazard, possible environmental benefits or negative impacts, and compatibility between existing conditions and anticipated development.
- C. As part of the Boise River System Development Permit all developments which are adjacent to, or include all or part of the Greenbelt Setback Lands and Waters as specified in Section 11-16-4.2A shall have the application to Boise City be reviewed by the Board of Park and Recreation Commissioners for their recommendations. The Board of Park and Recreation Commissioners shall receive comments from the Boise Parks and Recreation Department and shall make written comments including specific findings of fact to the Planning and Zoning Commission for inclusion in the public hearing.
- D. A Boise River System Development Permit may be conditionally approved, but may not be issued, until all required permits from appropriate State or Federal agencies have been completed and approved.

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- E. The following general standards for development proposals shall be complied with within the Floodplain (Floodway and Floodway Fringe) zones:
1. Alterations to a water course which would diminish the flood carrying capacities or increase water velocities within the floodplain shall not be allowed unless there will be no adverse effects on the site or to surrounding properties upstream, downstream or across stream.
  2. All new development shall be located and designed to promote the Flood Protection, Fish & Wildlife, Development Opportunities and Recreation goals of the Boise City Comprehensive Plan and Boise River Plan.
  3. All new development shall utilize methods and practices, except for levees, that minimize flood damage potential to the development and prevent the increase in flood damage potential to other properties upstream, downstream or across stream. These measures shall be reviewed by the Public Works Department.
  4. Uses within the floodplain and regulations regarding development in the floodplain are also contained in Chapter 12, Boise Zoning Ordinance.
- F. Public Interest: The burden of proof always rests with the applicant to show that the proposed use does not conflict with spirit and intent of the Boise River Plan.
- G. No fill program shall adversely affect the riparian and aquatic habitats of the Boise River (formerly 11-13-05.1D3e).  
(5916, Amended, 05/18/1999; 5805, Amended, 07/22/1997)

### **Section 11-16-05.05 Abbreviated Procedures**

- A. After review of information generated by early coordination with regulatory and resource agencies and review of the preliminary site plan, the Planning Director may determine that the proposed development qualifies for the abbreviated procedures if it meets the following criteria:
1. The proposed project restores or enhances and does not materially alter the existing surface and groundwater hydrology, soils, community of plants and animals, habitat present within and adjacent to the project area and all other wetlands and riparian functions and values, and,
  2. The proposed project does not affect more than 100 linear feet of river bottom or bank, nor more than 1/2 acre of Class A or B lands.
- B. Based upon the Planning Director's determination that a project qualifies for the abbreviated procedures, the applicant is relieved of the procedure of preparing the Final Site Plan.

### **Section 11-16-05.06 Conclusions of Law**

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- A. The findings of fact and conclusions of law to support decisions on Boise River System Development Permit applications must be based upon compliance with the Boise River System Ordinance. A Boise River System Development Permit may be approved when the evidence presented meets all of the following conclusions of law:
1. That the proposed development is in compliance with the applicable Standards for Uses in Class A, B or C lands and waters (Section 11-16-03).
  2. That the proposed development complies with all the policies and standards of the Boise Comprehensive Plan, the Boise River Plan, the Floodplain Ordinance (Chapter 12), and the Boise River System Ordinance (Chapter 16).
  3. That the proposed development includes measures designed to insure that natural resources functions and values are preserved or enhanced and maintained.
  4. That the proposed development complies with or shall comply with all local, State and Federal laws and regulations.

(5805, Amended, 07/22/1997)

### **Section 11-16-05.07 Conditions attached to Boise River System Development Permits**

The Commission or Planning Director shall attach such conditions to the granting of a Boise River System Development Permit as it deems necessary to further the purposes of this ordinance, including, but not limited to:

- A. Requiring the project to be built to applicable specifications, standards or requirements of the Idaho Department of Water Resources, Army Corps of Engineers, the Idaho Fish & Game Department, U.S. Fish & Wildlife Service, Environmental Protection Agency, Boise City, and the applicant's approved Mitigation and/or Enhancement plans.
- B. A Boise River System Development Permit may be conditionally approved, but may not be issued, until all required permits from appropriate State or Federal agencies have been completed and approved.
- C. Requiring preservation and maintenance of existing vegetation and revegetation, and mitigation or enhancement of natural resource functions and values (Sections 11-16-06 & 07).
- D. Requiring structures adjacent to the Greenbelt to be landscaped consistent with the objectives of the Boise River Greenbelt or the extension of the natural setting of the Boise River (see also Section 11-16-04.2.F). Require parking areas adjacent to the Greenbelt to be screened from view at the time of construction by landscaping having a minimum height of five (5) feet.
- E. Limiting the amount of reclamation of eroded stream banks in the floodway and requiring overflow channels to remain open.

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- F. Requiring construction to be limited to a certain elevation or location, requiring the use of appropriate construction equipment, specifying a time that the construction shall be conducted or completed.
- G. Requiring bonding or other surety to guarantee completion of the construction or conditions of approval. The Planning Director shall have the discretion to allow the bonding or other surety for completion of construction or conditions of approval in the amount of 110% of the value of the construction or condition(s).
- H. Requiring written certification of completion with requirements and conditions by a registered engineer or consultant.
- I. Requiring that all sites be graded such that drainage from structures and parking areas is retained on site, or a system to assure that water quality standards shall be provided and maintained (formerly 11-13-04.4).

### **Section 11-16-05.08 Term of the Permit**

- A. The applicant shall have 18 months, unless otherwise fixed by the Commission, in which to effect a Boise River System Development Permit after approval by the Commission. Within this period, the holder of the permit must:
  - 1. Complete, perfect or bond the condition of approval.
  - 2. Acquire construction permits and commence placement of permanent footings and structures on or in the ground. The definition of structures in this context shall include sewer lines, water lines, streets, or building foundations; or
  - 3. Commence the use permitted by the permit in accordance with the conditions of approval; or
  - 4. For conceptual development permits (PUD), submit a complete application for a detailed development permit; or
  - 5. For projects which require platting, the plat must be recorded within this time frame.
  - 6. For phased projects each phase must be submitted within 24 months from the date of the concept approval or the date of approval of the previous phase, unless the Commission specifically approves a different phasing schedule.
- B. If the conditions of approval are not extended, completed or bonded within such period, said permit shall lapse.

### **Section 11-16-05.10 Extensions**

Refer to Section 11-6-4.8 (Boise City Zoning Ordinance)

**Section 11-16-05.11 Modification and Revocation**

Refer to Section 11-6-4.9 (Boise City Zoning Ordinance).

(Ord. No. 5459, Enacted, 06/22/93; Ord. No. 5750, Amended, 08/27/96)

**Section 11-16-06 MITIGATION**

**Section 11-16-06.1 Mitigation Intent**

Mitigation is a process designed to offset, as much as practical, the negative effects or impacts of a proposed development upon the natural resource functions and values. Mitigation sequences have been designed for Class A and B lands and waters (Section 11-16-06.4) and must be determined early in the planning process through the generation of field data (Section 11-16-06.5.A) and by early coordination with resource regulatory agencies (Section 11-16-06.5.B) to ensure practical and appropriate mitigation. Section 11-16-06.5.D provides a listing of preferred assessment and evaluation tools which may be used in generating a mitigation program.

**Section 11-16-06.2 General Purposes of Mitigation**

All new development shall be located and designed to promote Flood Protection, Fish & Wildlife habitat, Recreation, Development Opportunities, public access to the Boise River Greenbelt including handicapped accesses and other goals of the Boise City Comprehensive Plan and the Boise River Plan.

(5805, Amended, 07/22/1997)

**Section 11-16-06.2.1 Class A**

Site-specific mitigation goals for Class A and B Lands will be no-net-loss of existing natural resource functions and values associated with flood protection, fish and wildlife habitat, recreation and other goals of the Comprehensive Plan and Boise River Plan.

(5805, Amended, 07/22/1997)

**Section 11-16-06.2.2 Class B**

Site-specific mitigation goals for Class B lands are to demonstrate improvements to natural resource functions and values and mitigate negative impact to existing natural resource functions and values. Habitat enhancement compatible with surrounding environments is encouraged.

**Section 11-16-06.3 Natural Resource Functions & Values**

In a flood plain, continuous physical and biological interactions occur between riparian, aquatic, and terrestrial ecosystems through exchanges of surface and groundwater nutrients, and plant and animal species. Site-specific natural resource functional values and their relative importance will vary along the river and between Class A and B lands. Natural resource functions and values are:

- A. Water quality protection and improvement
- B. Habitat for fish & wildlife

- C. Nutrient retention & removal
- D. Channel stability
- E. Food chain support
- F. Flood storage & desynchronization
- G. Groundwater recharge & discharge
- H. Active & passive recreation
- I. Aesthetics
- J. Cultural resources

**Section 11-16-06.4 Mitigation Measures and Sequencing for Class A, B & C Lands and Waters**

- A. For Class "A" lands and waters: The mitigation sequence will be examined in the order listed below. Several mitigation measures may be used in combination to provide the greatest protection to the resource. Different mitigation sequencing may be used provided extensive evidence is submitted by the applicant to justify the different sequencing and the mitigation plan adequately demonstrates the impacts and public benefits that are available by applying the different sequencing. The burden shall be on the applicant to demonstrate compliance with the minimum standards described in this Section. The mitigation sequences from the most to the least preferable is:
  - 1. Avoid adverse impacts by selecting alternative alignments or locations.
  - 2. Minimize impacts by limiting encroachments, using less intrusive construction techniques, or other methods.
  - 3. Restore the impact area to as near its original condition as possible.
  - 4. In-kind compensation, on-site.
  - 5. In-kind compensation, off-site.
- B. For Class "B" lands and waters: The mitigation sequences will be examined in the order listed below. Several mitigation measures may be used in combination. Different mitigation sequencing may be used provided extensive evidence is submitted by the applicant to justify the different sequencing and the mitigation plan adequately demonstrates the impacts and public benefits that are available by applying the different sequencing. The burden shall be on the applicant to demonstrate compliance with the minimum standards described in this Section. The mitigation sequences from the most to

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the least preferable are:

1. Avoid adverse impacts by selecting alternative alignments or locations.
  2. Minimize impacts by limiting encroachments, using less intrusive construction techniques, or other methods.
  3. In-kind or out-of-kind compensation, on-site or off-site for those functional values important for maintaining the integrity of the Boise River System and meeting the goals of the Comprehensive Plan and the Boise River Plan.
- C. For Class "C" lands and waters, mitigation is not required. However, development in Class C lands shall not adversely affect adjacent and nearby habitat in Class A or Class B lands.

(5805, Amended, 07/22/1997)

### **Section 11-16-06.5 Procedures for Development of Mitigation Projects**

- A. Generation of field data: To accurately describe existing conditions, constraints and their magnitude, existing natural resource functions and values will be assessed by the applicant and provided with the project application for review by the City along with a comprehensive technical plan to mitigate for impacts to natural resource functions and values, or to enhance natural resource functions and values (Section 11-16-06.3.)
- B. Early Coordination with Resource & Regulatory Agencies: Consultation with government agencies which have resource responsibilities must be initiated by the applicant as soon as practicable to determine the natural resource functions and values existing within the area requiring a Boise River System Development Permit. Consultation shall also include a discussion of the presence of threatened and endangered species, and species of special concern; fish and wildlife habitat requirements and their sensitivity to disturbance; and measures needed to mitigate for project related impacts, or to enhance existing habitat. Consultation shall be documented.
- C. Development of a Comprehensive Mitigation Design: Proposed modifications to Class A, and B lands and waters will follow the process outlined below:
1. Preliminary Site Plan:
    - a. A preliminary site plan shall be developed by the applicant which includes a discussion and map identifying the location and quality of existing natural resources, impacts to those resources attributable to the proposed project, and proposed mitigation measures.
    - b. This plan will be included with the application for a Boise River System Development Permit. This plan will be offered by the Planning Department to State and Federal resource and regulatory agencies, local interest groups, and affected neighborhood organizations as a part of the



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permit review. The review period shall commence when the City determines all required information has been provided by the applicant. The comments of these agencies and groups will be fully considered by the City in their decision to approve, approve with conditions, or disapprove the application.

- c. The mitigation plan may qualify for the abbreviated procedure if it complies with Section 11-16-05.5.
  2. Final Site Plan: Upon approval of the Boise River System Permit a final site plan shall be developed by the applicant which includes a detailed description, plan view, profile, and typical sections of the mitigation project. The final site plan will fully describe proposed changes to the resource, and the materials and methods used to accomplish mitigation. It may be offered to the State and Federal agencies for review. Comments of these agencies will be fully considered by the City in its determination of whether the final site plan is in accordance with the Boise River System Permit.
  3. Preliminary and final site mitigation plans will be judged on their ability to replicate floodplain and wetland hydrology and soils, their ability to replicate the species composition of the native plant community; quantifiable benefits to fish and wildlife, the protection of fish and wildlife from disturbance, and provision for all other natural resource functions and values.
  4. Boise City, the applicant, and review agencies shall develop measurable and appropriate performance standards for each proposed mitigation project prior to final site plan approval.
  5. The applicant shall demonstrate to the City effective measures including a financial commitment to implement the mitigation plan and the expertise to accomplish the mitigation plan. This may be demonstrated by completing the mitigation project prior to approval of development plans, posting a performance bond, or other guarantee acceptable to the City. The release of a performance bond is contingent upon the applicant demonstrating to the City compliance with the performance standards.
  6. The applicant shall monitor the performance of constructed mitigation improvements for a minimum period of 18 months unless otherwise fixed by the Commission. Acceptable performance shall be judged by comparing measured values to previously agreed upon standards.
- D. Preferred Assessment & Evaluation Tools: The following are recognized as preferred tools to be used in generating information for wetland mitigation and enhancement, projects: U.S. Army COE Wetland Evaluation Technique (WET) II to identify wetland functions and values; U.S. FWS Habitat Evaluation Procedures (HEP) to quantify fish and wildlife habitat; the Federal Manual for Identifying and Delineating Jurisdictional Wetlands - Jan. 1989 (a.k.a. Unified Federal Methodology for Identification and Delineation of Wetlands); the publications Wetland Plants of the State of Idaho 1986, 1986

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Wetland Plant List Northwest Region, and 1986 Wetland Plant List Intermountain Region to identify the hydrophytic character of plant species; and the publication Hydric Soils of the State of Idaho 1985 to identify hydric soils.

(Ord. No. 5459, Enacted, 06/22/93; Ord. No. 5750, Amended, 08/27/96)

### **Section 11-16-07 ENHANCEMENT**

#### **Section 11-16-07.1 Enhancement Intent**

The goal of enhancement shall be to encourage where appropriate innovative development design to increase the quantity and improve the quality of existing natural resource functions and values.

#### **Section 11-16-07.2 Enhancement Plans**

Enhancement plans may be submitted, but are not required, as part of an application for a Boise River System Development Permit. If they are submitted, they shall comply with Section 11-16-7.3.

#### **Section 11-16-07.3 Enhancement Design Standards**

- A. Enhancement of Class A, B and C waters.
  - 1. Enhancement of waters held by Fish and Game: Enhancement or creation of water amenities that use waters held by Fish and Game shall be designed for the propagation and perpetuation of fish and wildlife resources, and;
  - 2. Enhancement of Non-Fish and Game Waters: Enhancement or creation of water amenities not held by Fish and Game may be designed to enhance fish and wildlife resources or to provide a visual amenity.
  
- B. Enhancement of Class A, B and C Passive Open Space Lands
  - 1. Class A Passive Open Space: Class A Passive Open Space Lands shall be designed with the primary intent of providing enhancement to fish, wildlife and riparian resources with specific design or attention given to Eagles, Blue Heron, Trout and/or water fowl. Vegetation shall be predominantly native or naturalized plant species.
  - 2. Class B and C Passive Open Space Lands: Class B and C Passive Open Space Lands should be designed to encourage the creation of fish, wildlife and riparian resources and to create transition between natural areas and areas of more intense development. Vegetation may be a combination of native or naturalized vegetation and ornamental or exotic species.

Native and naturalized vegetation should be located near established or created habitat areas and transition to more ornamental species towards or within the

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development.

- C. Waiver of Standards: In order to provide an incentive for higher quality and more extensive enhancement plans, waivers of zoning and subdivision standards may be requested.
1. Waivers may be granted by the Commission or Council on enhancement plans that have been designed in accordance with Section 11-16-7; and that the enhancement plan is in compliance with the Boise River System Ordinance.
  2. Waiver of Standards may be approved when evidence presented meets the following conclusions of law:
    - a. That the proposed enhancement plan is in compliance with the applicable standards of Section 11-16-7.
    - b. That the proposed enhancement plan complies with all local, State and Federal laws and regulations.
    - c. That the waivers requested ensure a benefit to the public.
  3. Examples of waivers that may be requested are:
    - a. The waiver of sidewalk standards for the construction of pedestrian, bicycle and/or nature's trails, that functionally replace the sidewalks. Pedestrian pathways shall be encouraged to be available on both sides of streets.
    - b. Reduction in street width standards to minimize impervious surfaces and to provide more land for vegetation and habitat improvements, provided, however, that private streets are to be discouraged.
    - c. Flexibility in lot size and setback standards to provide large areas increasing habitat.
    - d. Density transfers and clustering of uses to provide larger areas for habitat improvements.
    - e. Permit stream and irrigation system waivers from the design requirements of the subdivision ordinance.
    - f. Permit fencing waivers from irrigation and streams as required in the subdivision ordinance.
    - g. Permit waivers of drainage standards, as long as drainage and water quality goals are met.
    - h. Permit flexibility in the enhancement of existing marginal Class A lands

by permitting enhancements that improve the river riparian values.

- i. Public safety considerations.
- j. Any waiver or variance from setback requirements under this Ordinance must be shown to be required by legal necessity (a taking would otherwise occur) or to promote and enhance public safety, or that strict compliance with the setback in a given area would result in more damage to the habitat and environment than would granting the waiver or variance under the provisions of this and other ordinances.

**Section 11-16-07.4 Procedures for Development of Enhancement Projects**

- A. Generation of Field Data: The information required in Section 11-16-06.5.A. shall be gathered and used to aid in the design of the enhancement plan.
- B. A combined Mitigation and Enhancement preliminary plan may be submitted if the plans clearly designate which features fulfill the Mitigation Requirements and which features fulfill the Enhancement Plan. Enhancement features may be considered part of a Mitigation Plan only if such features meet the standards of 11-16-06.4 and 06.2.
- C. The submitted Enhancement Plan should include the following:
  - 1. Preliminary Site Plan: A preliminary site plan submitted by the applicant shall identify the location and quality of existing natural resources, impacts to those resources and the proposed enhancement measures.
  - 2. The preliminary Site Plan will be offered by the Planning Department to State and Federal resource and regulating agencies having resource responsibilities, and affected neighborhood organizations.
  - 3. Final Site Plan: Upon approval of the Boise River System Permit and prior to construction, a final site plan shall be submitted by the applicant to the Planning Division. The final Site Plan shall show the final conditions of approval.
  - 4. Abbreviated Procedures: The Enhancement Plan may qualify for the abbreviated procedures if it complies with Section 11-16-5.5.
- D. The applicant shall monitor the performance of constructed enhancements for a minimum period of 18 months unless otherwise fixed by the Commission. Acceptable performance shall be judged by comparing measured values to previously agreed upon standards.
- E. The applicant shall demonstrate to the City effective measures including a financial commitment to implement the enhancement plan and the expertise to accomplish the enhancement plan. This may be demonstrated by completing the enhancement project prior to approval of development plans, posting a performance bond, or other guarantee acceptable to the City. The release of a performance bond is contingent upon the

applicant demonstrating to the City compliance with the performance standards and perpetual maintenance of the enhancements.

(Ord. No. 5459, Enacted, 06/22/93; Ord. No. 5750, Amended, 08/27/96)  
(5895, Amended, 02/23/1999)

## **Section 11-16-08 VARIANCES AND APPEALS, MISCELLANEOUS, VIOLATIONS**

### **11-16-08.1. Variances**

Any variance to the requirements imposed by this ordinance, and enforced by this ordinance shall require review and approval by the Planning & Zoning Commission in accordance with the criteria of this section and Section 11-06-11.

### **Section 11-16-08.2 Appeals**

- A. An appeal of an administrative decision by the Planning Director shall follow the procedures listed in Section 11-03-7.1 of the Boise City Zoning Ordinance.
- B. An appeal of the Planning & Zoning Commission's decision shall follow the procedures listed in Section 11-03-07.2 of the Boise City Zoning Ordinance.

### **Section 11-16-08.3 Miscellaneous**

- A. **Severability:** If any provisions of this ordinance or the application to any persons or circumstances is held invalid, the remainder of the ordinance or the application or provisions to other persons or circumstances shall not be affected thereby.
- B. **Fees:** The Planning Director shall maintain a current list of fees for all zoning applications. The fees for zoning applications may be revised only by the City Council.
- C. **Abrogation & Greater Restrictions:** The provisions of this ordinance shall be in addition to, and shall not be deemed to repeal, abrogate, or impair any other ordinance, regulation, easement, covenant or deed restriction. In the event that the provisions of this ordinance and any other ordinance, regulation, easement, covenant or deed restriction conflict or overlap, whichever has the more restrictive requirements shall control.

### **Section 11-16-08.4 Violations & Enforcement**

- A. Any person, entity or organization which performs or causes or permits to be performed any work or activity in violation of Chapter 16 of the Boise City Zoning Ordinance, or who performs any work in excess of the authority granted by the issuance of a Boise River System Development Permit hereunder, shall be guilty of a misdemeanor; and upon conviction thereof may be sentenced to serve up to six (6) months in jail or pay a fine of up to three hundred dollars (\$300) or both. Each day or portion thereof during which any work performed in violation of this Chapter continues in existence shall constitute a separate and distinct violation of these provisions.

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- B. The City shall require any construction done in violation of Chapter 16 to be redone to meet requirements of the permit, or may require the construction to be removed and the area returned to its original condition at the expense of the owner or applicant.
- C. In the event the construction is determined to be a nuisance or is by its terms a nuisance the City may abate the nuisance and recover its expenses pursuant to Boise City and Idaho State Codes.(Ord. No. 5459, Enacted, 06/22/93)