

MEMORANDUM

To: Mayor and Foley City Council
Subject: Moratorium Waiver Request – Nickel Creek Development
Date: July 15, 2025
From: Wayne Dyess, Executive Director – Infrastructure and Development

Background

On May 5, 2025, the City Council adopted a temporary development moratorium. Included in the adopted ordinance is Section 5, titled “Waiver Requests, Appeals and Relief.” This section functions as a “safety valve,” providing a process through which a property owner or their designated agent may request relief from the moratorium when specific criteria are met.

Importantly, approval of a waiver does not constitute approval of a development project. Rather, it allows the proposed development to proceed through the normal review channels (such as the Planning Commission, Land Development Permits, and Building Permits) without being restricted by the moratorium.

To approve a waiver, a majority of the City Council must determine that the following four criteria are satisfied:

1. Exceptional Hardship
2. No Precedent or Circumvention
3. Consistency with Public Policy
4. Minimal Adverse Impact

Item 1: Nickel Creek Development – East Pride Boulevard and Juniper Street

The applicant has requested a waiver from the moratorium for a 37.08-acre site located at the southwest corner of East Pride Boulevard and Juniper Street. The property is split-zoned: 8.68 acres are zoned B-1A, and 28.40 acres are zoned GPH-1. The waiver request applies to the GPH-1 portion of the property, which has not received site plan approval or submitted a preliminary plat.

The B-1A portion received site plan approval in April 2025, including a sequencing variance granted by the Board of Adjustment and Appeals in September 2024, which allowed residential construction to begin prior to commercial development.

Staff Recommendation

Staff does not recommend granting the waiver, as the applicant does not meet the criteria under Section 5 of the moratorium ordinance:

1. **Exceptional Hardship** – While the applicant references infrastructure coordination challenges between zoning areas, no evidence has been provided of a unique, immediate, or material hardship that is not self-created. The applicant had multiple opportunities to submit required documents prior to the moratorium and opted not to pursue available PUD pathways.
2. **No Precedent or Circumvention** – The waiver request attempts to proceed without zoning-compliant site plan approval or a valid LDP for the GPH-1 area. Granting a waiver under these conditions risks setting a precedent that circumvents established development procedures and the moratorium’s intent.
3. **Consistency with Public Policy** – The GPH-1 portion includes single-family garden homes, which are not currently a priority within the City’s strategic housing policies. The request does not include references to land use designations, zoning compliance, or alignment with the City’s adopted plans.
4. **Minimal Adverse Impact** – Ongoing concerns related to stormwater runoff and drainage, particularly in proximity to the adjacent Cypress Pond subdivision, remains a concern which may affect certain aspects of site development.

In conclusion, staff recommends that the applicant proceed with submission of a preliminary plat following the expiration of the moratorium on plats (October 1, 2025) and does not support granting the requested waiver at this time. The B-1A (mixed-use) portion of the project was approved prior to implementation of the moratorium. As a result, progress toward site development for the B1-A portion can proceed.