

**ORANGE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**ACTION AGENDA ITEM ABSTRACT**

**Meeting Date:** June 16, 2009

**Action Agenda  
Item No.** 4-K

**SUBJECT:** License Agreement for Agricultural Use (Future Northeast District Park)

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**DEPARTMENT:** Environment and Resource  
Conservation

**PUBLIC HEARING: (Y/N)**

No

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**ATTACHMENT**

- 1) Site Map
- 2) License Agreement

**INFORMATION CONTACT:**

David Stancil, 245-2590  
Rich Shaw, 245-2590

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**PURPOSE:** To authorize the County entering into a license agreement for the use of the future Northeast District Park property for agricultural activities.

**BACKGROUND:** Orange County owns a 143-acre property acquired in late 2007 for the future Northeast District Park and other compatible uses. The property is located on Schley Road, about ½ mile east of the intersection with NC 57 in Little River Township.

The County is "land banking" this property until funds are identified to develop and operate the future park. A master plan for the entire site will be developed in the future, beginning with a preliminary conceptual plan for Board consideration at a future meeting.

The site includes a pasture and two smaller fields used for hay production (67.5 acres total). The previous owner leased the property to an adjacent farmer (Mr. Ray Nichols) and, prior to acquiring the property, the Board considered the possibility of continuing to lease the property to the same farmer until the site is ready for park development. The continued agricultural use of the property would eliminate the County's need to maintain the open fields, would help with property oversight, and would keep the land in productive use.

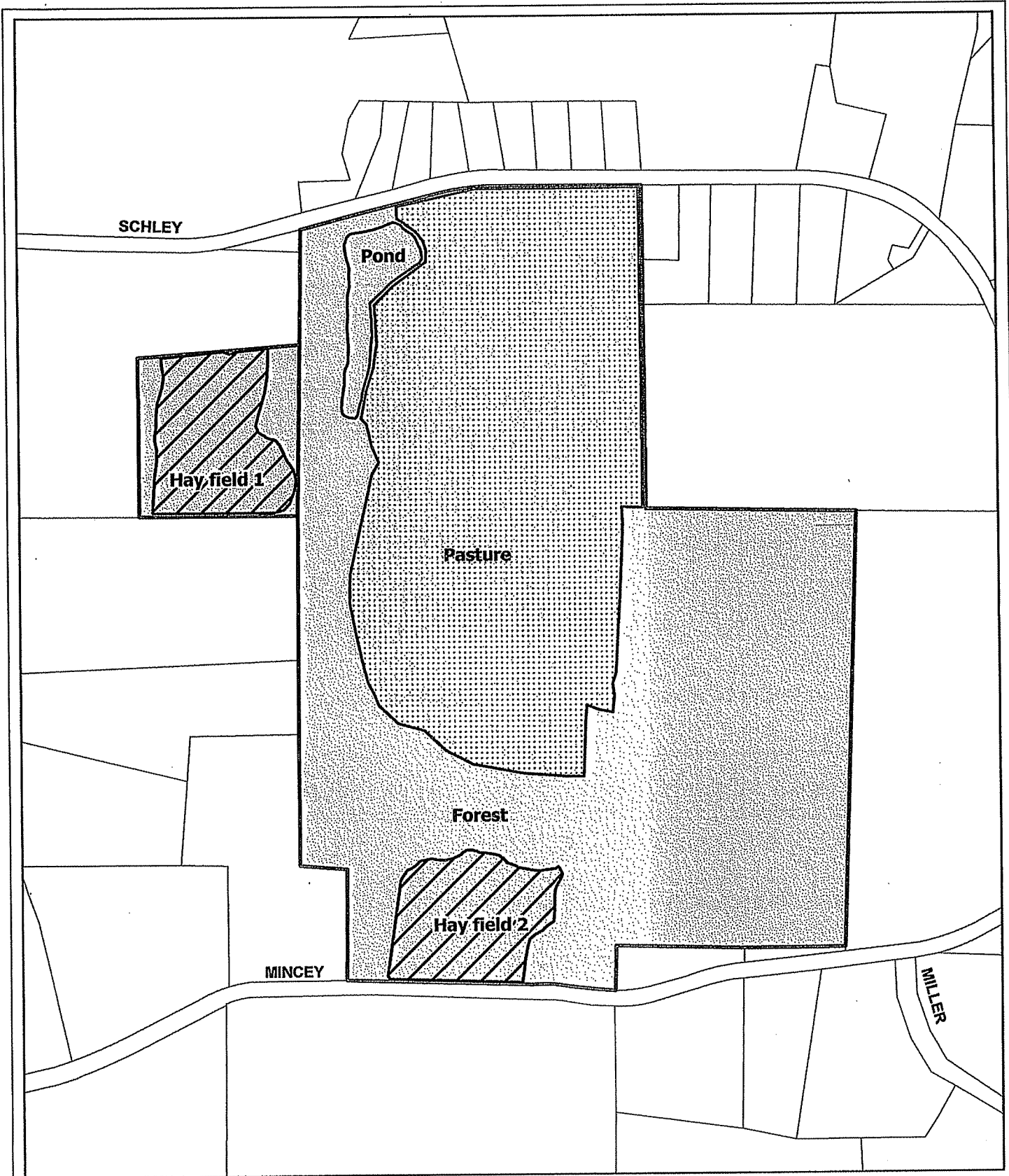
Substantive terms of the proposed agreement are highlighted below:

- The property may only be used as pasture and for hay production
- The pasture must be fenced off from the pond and from the rest of the property (at the Licensee's expense)
- Annual fee is \$675 (\$10 per acre)
- Agricultural practices will conform to a Conservation Plan developed for the property by the Orange NRCS/Soil & Water Conservation District office
- Licensee will not place buildings or other structures on the property
- Licensee will provide liability insurance coverage in the amount of \$500,000 and will name the County as an additional insured on policies
- The agreement may be terminated by either party with 60 days notice






**FINANCIAL IMPACT:** The County will receive an annual payment of \$675 (\$10 per acre) for the agricultural use of the property. Having this agreement will also significantly reduce the County's costs for management and stewardship of the property for such things as mowing the open fields and monitoring the property for unauthorized uses.

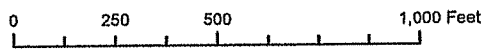
ERCD will continue to oversee the property in cooperation with the Orange NRCS/Soil & Water Conservation District. The Board may wish to consider at a future date whether all or a portion of the fees generated from this license could be used by ERCD for site management and stewardship. A decision by the Board may be requested at such time a pre-concept plan for the future district park is presented to the Board for approval.

**RECOMMENDATIONS:** The Manager recommends the Board approve the License Agreement, subject to final review by staff and the County Attorney, and authorize the Chair to sign on behalf of the Board.



### Future Northeast Park - Agricultural Use

-  Orange County property
-  Hay fields
-  Pasture
-  Pond
-  Parcel boundary



North Carolina

Orange County

License Agreement

This License Agreement is made effective as of this the \_\_\_\_ day of \_\_\_\_\_ 2009, by and between Orange County, North Carolina, a body politic and corporate, a political subdivision of the State of North Carolina, having an address of P.O. Box 8181, Hillsborough, North Carolina 27278, hereafter referred to as Licensor, and Raymond W. Nichols of 4021 NC 57, Hillsborough, North Carolina 27278, hereinafter referred to as Licensee.

WITNESSETH:

WHEREAS, Licensor is the sole owner, in fee simple, of two adjacent parcels of real property bearing Orange County PIN 9887-52-0801 and PIN 9887-33-4585, and containing 143 acres more or less (the "Property"); and

WHEREAS, Licensee intends to use a portion of the Property as further described on Exhibits A and B for hay production ("Hayfield #1" and "Hayfield #2") until such a time as the Property is needed for a county park and associated uses; and

WHEREAS, Licensee intends to use a portion of the Property as further described on Exhibits A and B for the pasturing of cattle ("the Pasture") until such a time as the Property is needed for a county park and associated uses; and

WHEREAS, the Pasture is contained within an existing fence that excludes the cattle from entering the pond and other portions of the Property;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto mutually agree upon the following terms, provisions, and conditions:

SECTION ONE  
GRANT OF LICENSE: DESCRIPTION OF PREMISES

Licensor hereby grants to Licensee a license to occupy and use, subject to all of the terms and conditions of this Agreement, the property described on Exhibits A and B attached hereto.

SECTION TWO  
LIMITATION TO DESCRIBED PURPOSE

A. The portion of the Property referred to herein as the Pasture, may be occupied and used by Licensee solely for pasturing cattle and for incidental purposes related to such purpose during the period beginning on July 1, 2009, and continuing until this Agreement is terminated as provided herein.

B. The portions of the Property referred to herein as Hayfield #1 and Hayfield #2 may be occupied and used by Licensee solely for hay production and for incidental purposes related to such purpose during the period beginning on July 1, 2009, and continuing until this Agreement is terminated or the Licensor notifies the Licensee that Hayfield #1 or Hayfield #2 will be needed for some other county use. Such notice shall be given in writing to the Licensee no less than ninety (90) days prior to the date needed for agricultural activities to cease on Hayfield #1 or Hayfield #2 or both Hayfield #1 and Hayfield #2.

C. Licensee shall at all times use their best efforts to use the Property in a manner satisfactory to Licensor. Nothing in this Agreement shall interfere with the rights of Licensor to sell or lease all or any part of the Property at any time.

SECTION THREE  
PAYMENTS

Licensee shall pay Licensor for this license at the rate of Six Hundred and Seventy-five Dollars (\$675) per year payable in advance. The first payment shall be made within ninety (90) days of the beginning of the period specified above. Subsequent annual payments shall be made promptly on July 1 during the continuation of this Agreement.

SECTION FOUR  
TERMINATION

A. Either party may terminate this Agreement at any time, without regard to payment periods by giving written notice to the other specifying the date of termination, such notice to be given not less than sixty (60) days prior to the date specified in such notice for the date of termination.

B. If Licensee shall make an assignment for the benefit of creditors, or be placed in receivership or adjudicated bankrupt, or take advantage of any bankruptcy law, Licensor may terminate this Agreement by giving written notice to Licensee, specifying the date of

termination, such notice to be given not less than one (1) day prior to the date specified in such notice for the date of termination.

#### SECTION FIVE APPORTIONMENT OF PAYMENTS ON TERMINATION

A. On any termination of this Agreement, Licensor shall apportion, on a yearly basis, the Six Hundred and Seventy-five Dollar (\$675) fee paid in advance from and including the first day of the year during which the Agreement is terminated to and including the day on which the Agreement is terminated, and the Licensor shall refund to the Licensee the unearned portion of such fee; provided, however, that no refund shall be given if such refund due under this Section is in an amount less than Ten Dollars (\$10.00).

B. On any termination of this Agreement Licensee, Licensor shall remove from the Property all cattle and any other personal property located on the Property.

C. Any termination of this Agreement, however caused, shall be entirely without prejudice to the rights of Licensor that have accrued under this Agreement prior to the date of such termination.

#### SECTION SIX COMPENSATION FOR DAMAGE

Licensee further agrees that they will compensate Licensor for any and all damage that may be done to the Property in carrying out the purpose described in Section Two of this Agreement.

#### SECTION SEVEN INSURANCE

Licensee agrees at all times to carry adequate liability insurance on the Property for the benefit of Licensor and Licensee as their interest may appear, in an amount of not less than Five Hundred Thousand Dollars (\$500,000); and to pay the premiums for such insurance and furnish Licensor with certificates from the insurance companies for the above policy, such insurance company to be acceptable to Licensor.

It is specifically agreed that, if Licensee fails to obtain the insurance specified above, Licensor may terminate this Agreement.

#### SECTION EIGHT INDEMNIFICATION OF LICENSOR

Licensee shall exercise their privileges under and pursuant to this Agreement at their own risk, and irrespective of any negligence of Licensor, Licensee shall indemnify and hold Licensor harmless from and against any and all liability for damages, costs, losses, and

expenses resulting from, arising out of, or in any way connected with, the occupation, use, or any means of ingress to or egress from the Property by Licensee, or the Licensees, invitees, or guests of Licensee, or the failure on the part of Licensee to perform fully all of Licensee's promises contained in this Agreement. Licensor shall not be liable to Licensee if for any reason whatsoever Licensee's occupation or use of the Property under and pursuant to this Agreement shall be hindered or disturbed.

#### SECTION NINE INSTALLATION AND MAINTENANCE OF FENCE

Licensee, and Licensee's sole expense, shall construct and maintain a good and sufficient fence around the Pasture for the purpose set forth in Section Two in locations to be mutually agreed on by authorized representatives of the parties. Licensee shall obtain approval from Licensor as to the type and height of the fence prior to constructing the same. Licensor shall be provided keys to any gate(s) that are installed on the Pasture.

Licensee agrees that any such fencing will be installed in a manner as to insure that they are safe, neat and functioning at all times. Licensee will maintain, service and repair and keep the fence in good working order at all times. Licensee assumes all responsibility for the repair and proper function of the fencing.

#### SECTION TEN NO BUILDINGS OR STRUCTURES

Licensee shall not erect any permanent buildings or other structures (other than the fencing described in Section Nine of this Agreement) on the Property, or erect or having erected or installed, permit to remain on the Property any temporary structures, fixtures, shelters, attachments or other things attached to or being on such Property and placed thereon by Licensee or the guests, invitees or Licensees of Licensee. Licensee agrees that their use of the Property will not cause or result in a violation of any Orange County Ordinance.

#### SECTION TWELVE REMOVAL OF PROPERTY

On revocation, surrender or other termination of the permission granted by this Agreement, Licensee shall quietly and peaceably surrender the Property in as good condition as such property was at the time of Licensee's entry on the Property under this Agreement and shall remove all livestock, fixtures and equipment, and other items placed on such property by Licensee, and if Licensee shall fail to do so, Licensor shall have the right to make such removal at Licensee's expense, the amount of which expense Licensee shall pay to Licensor on demand, and, if Licensor shall so elect, it shall have the right to take possession of and appropriate to itself without payment therefore any property of licensee, or anyone claiming under Licensee, then remaining on the Property.

SECTION THIRTEEN  
NO LANDLORD-TENANT RELATIONSHIP OR PROPERTY INTEREST

It is expressly agreed and understood that this Agreement shall not operate or be construed to create the relationship of landlord and tenant between Licensor and Licensee whatsoever.

Licensee expressly agrees that they do not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Property, by virtue of the rights granted under this Agreement or Licensee's occupancy or use under this Agreement. Licensee expressly agrees and understands that Licensor shall have the free and continual right to enter, inspect and occupy the Property at any time during the term of this Agreement subject to the terms hereof. Nothing contained herein shall require Licensor to obtain permission or notify Licensee prior to entering the Property.

SECTION FOURTEEN  
MISCELLANEOUS

It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.

This Agreement shall constitute the entire Agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.

Licensee's privileges under this Agreement shall not be assignable by Licensee in whole or in part.

[The remainder of this page is intentionally left blank. Signature page follows.]

In witness whereof, each party to this agreement has caused it to be executed on the date first written above.

LICENSEE:

\_\_\_\_\_  
RAYMOND W. NICHOLS

LICENSOR:

COUNTY OF ORANGE, NORTH CAROLINA

By: \_\_\_\_\_  
Valerie Foushee, Chair  
Orange County Board of Commissioners

Approved as to technical content:

\_\_\_\_\_  
Department Director

Approved as to form and legal sufficiency:

\_\_\_\_\_  
County Attorney

EXHIBIT A

[Description of the Pasture and Hayfields]

EXHIBIT B

[Map of the Pasture and Hayfields]