

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # \*B-7

Urgent  Routine

AGENDA DATE July 30, 2013

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Negotiate and Execute an Agreement with Boos Fund 1-Empire, LLC to Acquire and Use Property Located Adjacent to the Empire Regional Water Safety Training Center, Located on Yosemite Boulevard in the Community of Empire

STAFF RECOMMENDATIONS:

Authorize the Chief Executive Officer to negotiate and execute an agreement with Boos Fund 1-Empire, LLC to acquire and use property located adjacent to the Empire Regional Water Safety Training Center, located on Yosemite Boulevard in the community of Empire.

FISCAL IMPACT:

This agreement will allow the County to address an encroachment by a County improvement onto an adjoining property without having the expense of relocating the improvement and/or property line. There is no fiscal impact associated with the agreement. The cost of the County Surveyor work was \$2,840.42 for which reimbursement will be sought from the original surveyor.

BOARD ACTION AS FOLLOWS:

No. 2013-386

On motion of Supervisor Monteith, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST:



CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Negotiate and Execute an Agreement with Boos Fund 1-Empire, LLC to Acquire and Use Property Located Adjacent to the Empire Regional Water Safety Training Center, Located on Yosemite Boulevard in the Community of Empire  
Page 2

**DISCUSSION:**

The Regional Water Safety Training Center – Empire Community Pool was opened for public use on June 13, 2009 to serve County residents in Empire and all surrounding areas. The property located adjacent to the Empire Community Pool is being evaluated for acquisition by Boos Fund 1-Empire, LLC (Boos) for a private development.

In the process of evaluating the adjacent property for acquisition by Boos, it was discovered that the underground footing for the western retaining wall of the Empire Community Pool encroaches onto the adjoining property by approximately eight inches. Prior to finalizing the purchase of the property, Boos is requesting that the County enter into an Encroachment License Agreement recognizing the encroachment.

The County Surveyor has reviewed the survey findings and concurs that an encroachment exists. This item authorizes the Chief Executive Officer to negotiate and execute an agreement with Boos.

**STAFFING IMPACTS:**

There are no staffing impacts associated with this item.

**POLICY ISSUE:**

The recommended action supports the Boards' priority of a Strong Local Economy by providing an agreement necessary for the development of a vacant commercially zoned property by Boos development.

**CONTACT PERSON:**

Patricia Hill Thomas, Chief Operations Officer/Assistant Executive Officer  
Telephone: 209.525.6333

Angela Freitas, Director of Planning and Community Development  
Telephone: 209.525-6330

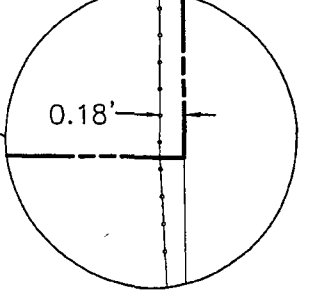
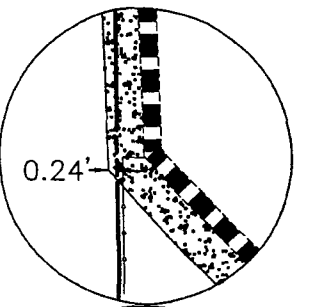
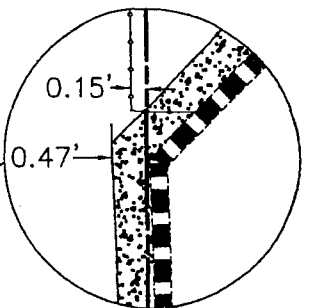
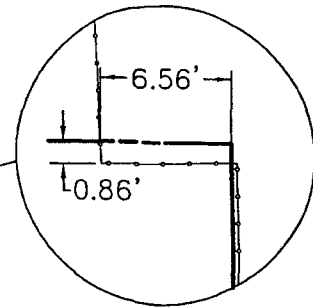
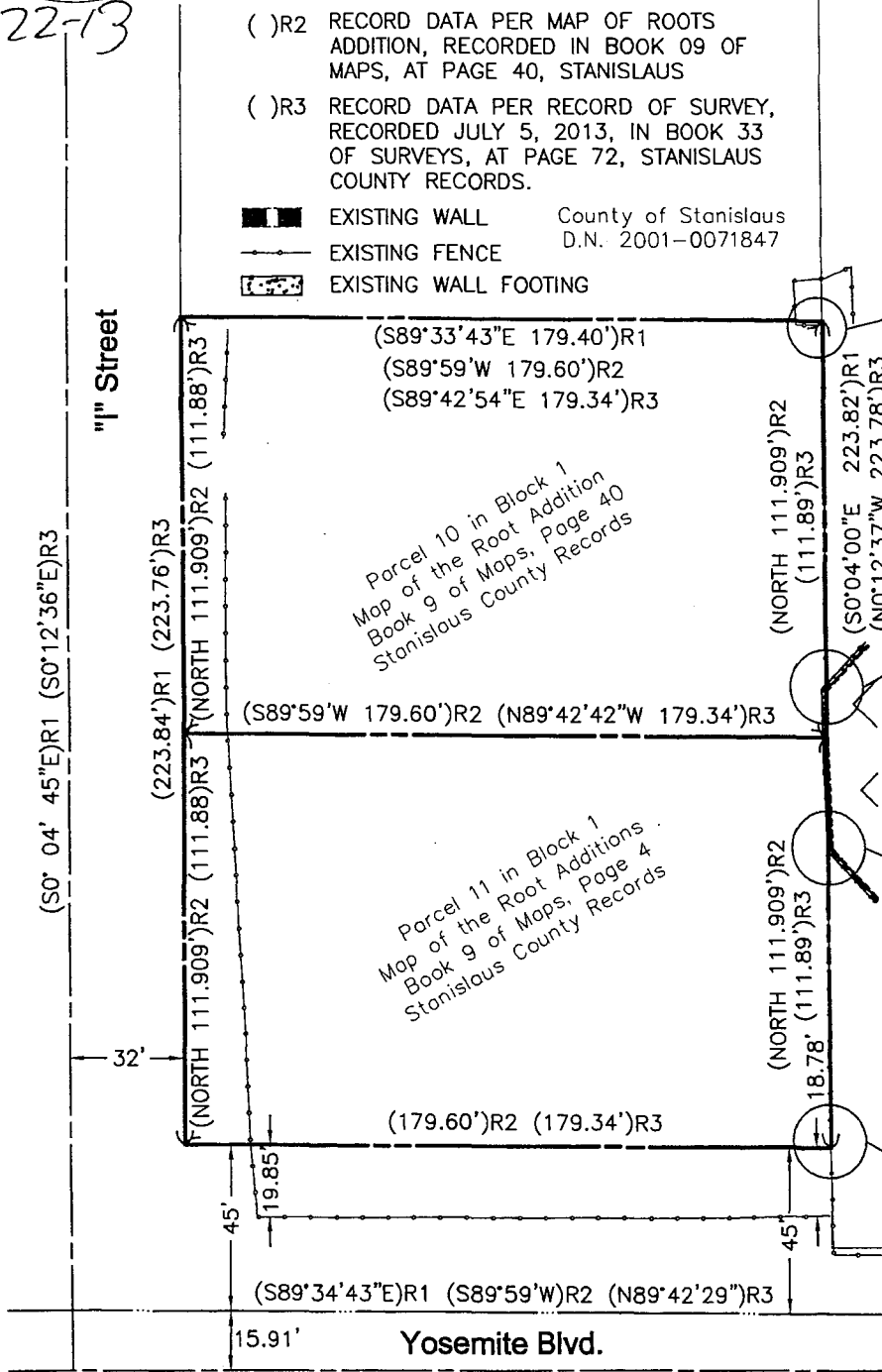
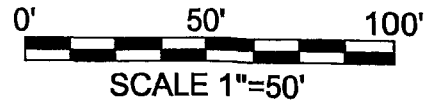
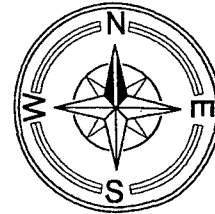


9-22-13

# ENCROACHMENT EXHIBIT SKETCH

## Legend

- ( ) R1 RECORD DATA PER RECORD OF SURVEY, RECORDED JUNE 26, 2009, IN BOOK 31 OF SURVEYS, AT PAGE 96, STANISLAUS COUNTY RECORDS.
  - ( ) R2 RECORD DATA PER MAP OF ROOTS ADDITION, RECORDED IN BOOK 09 OF MAPS, AT PAGE 40, STANISLAUS
  - ( ) R3 RECORD DATA PER RECORD OF SURVEY, RECORDED JULY 5, 2013, IN BOOK 33 OF SURVEYS, AT PAGE 72, STANISLAUS COUNTY RECORDS.
- EXISTING WALL County of Stanislaus D.N. 2001-0071847
  - EXISTING FENCE
  - EXISTING WALL FOOTING



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**CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS**

WWW.LARSANDERSEN.COM 559-276-2790 FAX 559-276-0850

JOB NO: 12145.00  
 DR. BY: IMB  
 CH. BY: IMB  
 DATE: 07/22/13  
 SCALE: 1"=50'

SHEET NO. 6  
 OF 6 SHEET

**RECORDED AT REQUEST OF:**  
Stanislaus County Board of Supervisors  
**NO FEE**



Stanislaus, County Recorder  
Lee Lundrigan Co Recorder Office  
**DOC- 2014-0029610-00**  
Friday, MAY 09, 2014 16:02:08  
Rcpt # 0003520519

OMK/R2/1-7

**WHEN RECORDED MAIL TO:**  
Stanislaus County Board of Supervisors  
Elizabeth A. King, Assistant Clerk  
1010 10<sup>th</sup> Street, Suite 6700  
Modesto, CA 95354

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ENCROACHMENT REVOCABLE LICENSE AGREEMENT

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*7/11/14*

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**ENCROACHMENT REVOCABLE LICENSE AGREEMENT**

THIS ENCROACHMENT REVOCABLE LICENSE AGREEMENT (this "License Agreement") is made and granted this 16<sup>th</sup> day of April 2014, 2013, by Boos Fund 1-Empire, LLC, a Florida limited liability company ("Boos"), with reference to the following facts.

**RECITALS**

A. Boos is the owner of that certain real property situated in the City of Empire, Stanislaus County, California, and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Boos Property").

B. The County Stanislaus, California, a Political Subdivision of the State of California ("Adjacent Property Owner") is the owner of that certain real property situated in the City of Empire, Stanislaus County, California, located adjoining the north and east property line of the Boos Property, and more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (the "Adjacent Property").

C. A chain link fence and a retaining wall owned by Adjacent Property Owner and/or the tenant or occupant of the Adjacent Property now encroaches upon the Boos Property, and Boos is willing to grant a conditional revocable encroachment license to Adjacent Property Owner, for the benefit of the Adjacent Property, for such encroaching chain link fence and retaining wall upon and subject to the terms, conditions and limitations herein provided.

**NOW, THEREFORE**, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Boos does hereby grant, bargain, sell and convey unto Adjacent Property Owner, for the benefit of the Adjacent Property, a license to allow the encroachment of the chain link fence and retaining wall existing on the date hereof, from the Adjacent Property onto the Boos Property, but only upon that part of the Boos Property located along the common north and east boundary line between the Boos Property and the Adjacent Property as now located, as shown on the site sketch attached hereto as Exhibit "C" and incorporated herein by this reference (the "Site Sketch").

The encroachment license granted herein is only granted upon and subject to the following conditions and limitations:

1. Boos reserves the unlimited and absolute right to terminate this License Agreement by the recording a written notice of such termination in the Public Records of Stanislaus County, California.
2. Upon the removal of the encroaching chain link fence and the retaining wall from the Boos Property, for any reason or by any cause, the license herein granted shall then become null, void and of no further force or effect, and no further encroachments of any kind from the Adjacent Property onto the Boos

Property shall be permitted.

3. No rebuilding, reconstruction, enlargement, extension or other alteration of any kind or nature of the encroaching chain link fence and retaining wall shall be permitted without the prior written consent and approval of Boos, which consent and approval may be given or withheld by Boos in its sole and absolute discretion.
4. The chain link fence and retaining wall shall at all times be maintained by Adjacent Property Owner and its successors, assigns, tenants and occupants, in good condition and state of repair, and in compliance with all applicable laws, ordinances and regulations.
5. The License granted by Boos herein is only made as an accommodation to Adjacent Property Owner and the Adjacent Property, and until such time as Boos terminates this License as herein provided, the chain link fence and retaining wall shall not be considered hostile to Boos's property rights or those of any of its successors in title.

This License Agreement is not intended to be, nor shall it be construed to be, a conveyance in fee of or an easement on any part of the Boos Property, but only of the right, privilege, license and license for the aforesaid purposes in and limited to the immediate area of such encroachments, as shown on the Site Plan.

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[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the date first written above.

**BOOS:**

BOOS FUND 1 – EMPIRE, LLC, a Florida limited liability company

By: Boos Development West, LLC, a Florida limited liability company

By Robert D. Boos  
Robert D. Boos, Managing Member

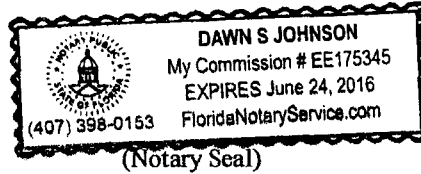
STATE OF FLORIDA  
COUNTY OF Pinellas

On 4/7/14 before me, Dawn S Johnson, personally appeared Robert D Boos, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Florida that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Dawn S Johnson  
Signature of Notary Public



COUNTY OF STANISLAUS

Stan Risen  
Name: STAN RISEN  
Title: CHIEF EXECUTIVE OFFICER

STATE OF CALIFORNIA  
COUNTY OF Stanislaus

On April 16, 2014 before me, Melissa A Parikh, Notary Public, personally appeared Stan Risen, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Melissa A Parikh  
Signature of Notary Public

(Notary Seal)



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF BOOS PROPERTY**

Lots 10 and 11 in Block 1 of Root Addition to Town of Empire, as per Map thereof filed August 14, 1920 in Volume 9 of Maps, Page 40, Stanislaus County Recorder.



**EXHIBIT "B"**

**Legal Description of Adjacent Properties**

ALL THAT PORTION OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

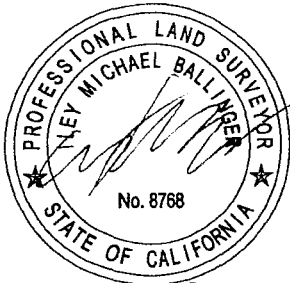
**Parcel 1** (Doc. No. 2000-0091100-00, S.C.R.)

THE NORTH 468.995 FEET OF THE SOUTH 501.995 FEET OF THE WEST 515.06 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29. THE SOUTH LINE OF SAID 468.995 FEET BEING THE PRESENT NORTH LINE OF 66 FOOT WIDE YOSEMITE BOULEVARD.

**Parcel 2** (Doc. No. 2001-0071847-00, S.C.R.)

LOTS 8 AND 9 IN BLOCK 1 OF ROOT ADDITION TO THE TOWN OF EMPIRE, AS SHOWN ON THE MAP THEREOF RECORDED IN VOLUME 9 OF MAPS, AT PAGE 40, STANISLAUS COUNTY RECORDS.

EXCEPTING THEREFROM THE NORTH 90.637 FEET OF SAID LOT 8.



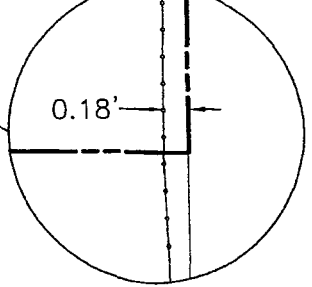
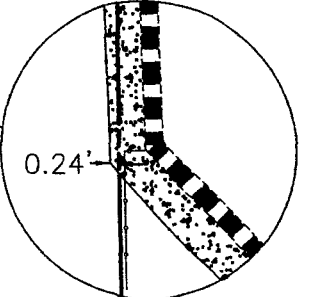
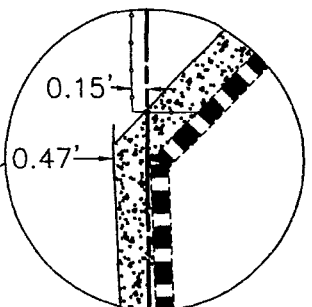
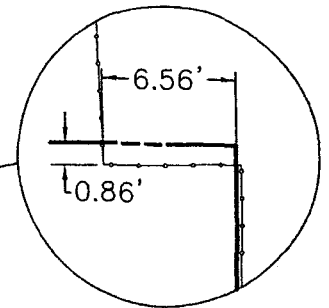
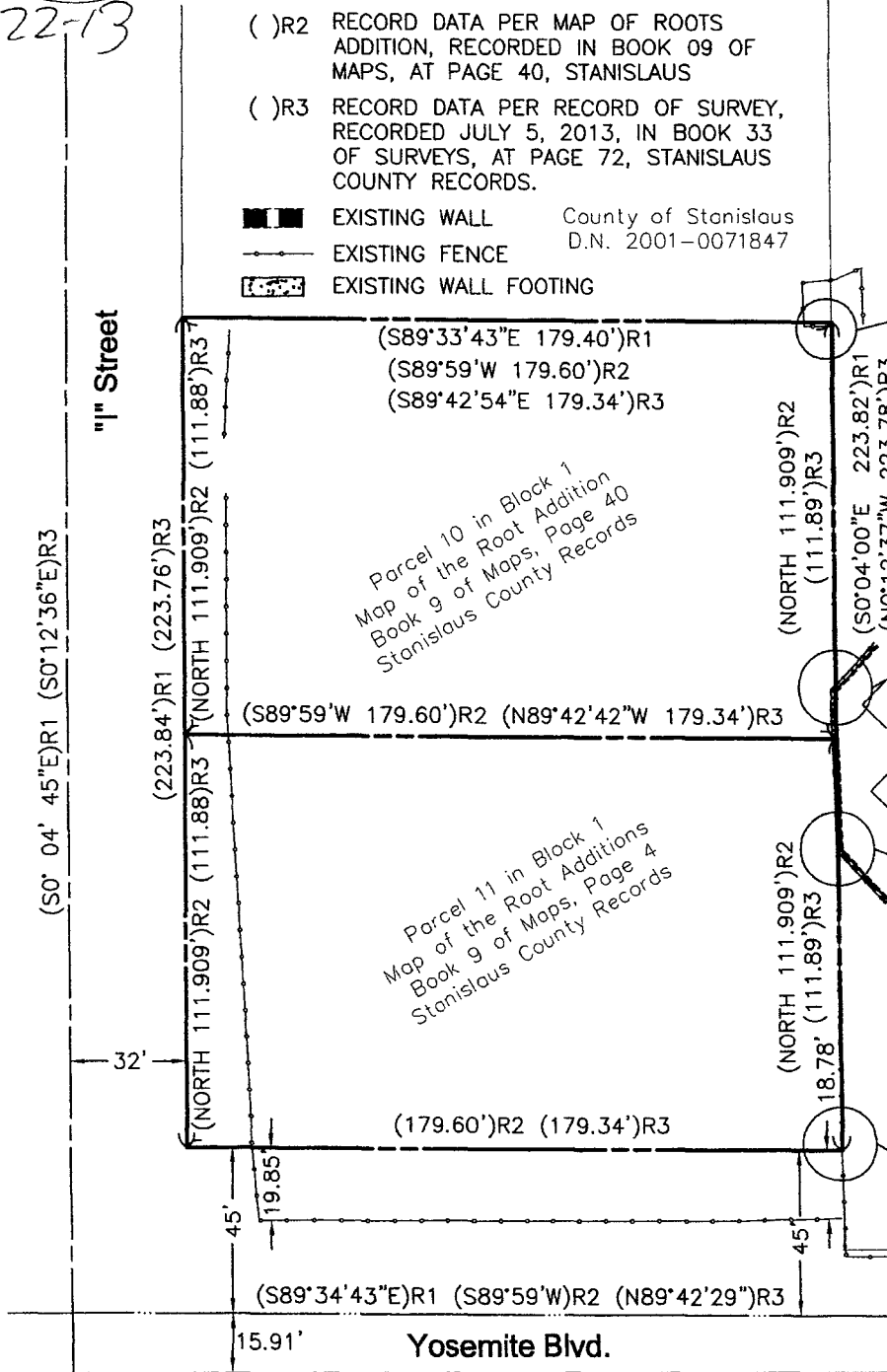
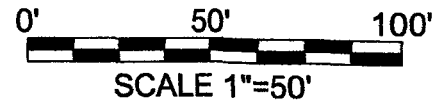
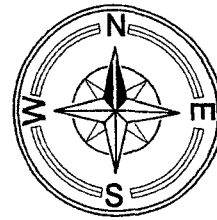
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# EXHIBIT "C" - ENCROACHMENT EXHIBIT SKETCH

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