

COUNCIL OF THE COUNTY OF MAUI

**ECONOMIC DEVELOPMENT, AGRICULTURE,
AND RECREATION COMMITTEE**

July 6, 2012

**Committee
Report No. _____**

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Economic Development, Agriculture, and Recreation Committee, having met on June 14, 2012, makes reference to County Communication 12-63, from the Director of Parks and Recreation, transmitting a proposed resolution entitled "AUTHORIZING THE ISSUANCE OF AN ENCROACHMENT AGREEMENT AND LICENSE TO THE MAUI FULL GOSPEL KOREAN CHURCH FOR THE ENCROACHMENT OF ITS WALL ONTO KE'OPUOLANI REGIONAL PARK".

The purpose of the proposed resolution is to grant an Encroachment Agreement and License to the Maui Full Gospel Korean Church, for an existing boundary wall located on a portion of Keopuolani Regional Park, Wailuku, Maui, Hawaii.

Your Committee notes that Section 3.44.030, Maui County Code, authorizes the Council to dispose of County property by adopting a resolution approved by two-thirds of its members when it finds that to do so is in the public interest.

Your Committee received a revised proposed resolution incorporating nonsubstantive revisions.

Your Committee notes that the Maui Full Gospel Korean Church purchased its property in 1990. At that time, the property contained buildings and a hollow tile wall along the boundary of the property, adjacent to the Keopuolani Regional Park. Subsequently, the church purchased an adjoining lot, and as it began the process to consolidate the two lots, survey work revealed minimal encroachment on the adjacent park property of approximately 300 square feet.

The Department of Parks and Recreation supported the request for an Encroachment Agreement and License. The Department considers the encroachment to have little impact on park usage, given that the park property is near a drainage outlet and unsuitable for recreation. The terms of the license require the church to remove the wall at the request of the Director of Parks and Recreation if the park property is used for any future public purpose.

COUNCIL OF THE COUNTY OF MAUI

**ECONOMIC DEVELOPMENT, AGRICULTURE,
AND RECREATION COMMITTEE**

July 6, 2012
Page 2

**Committee
Report No.** _____


Your Committee voted 7-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair White, Vice-Chair Cochran, and members Baisa, Carroll, Couch, Hokama, and Pontanilla voted "aye".

Your Committee is in receipt of a further revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Economic Development, Agriculture, and Recreation Committee **RECOMMENDS** the following:

1. That Resolution _____, as revised herein and attached hereto, entitled "AUTHORIZING THE ISSUANCE OF AN ENCROACHMENT AGREEMENT AND LICENSE TO THE MAUI FULL GOSPEL KOREAN CHURCH FOR THE ENCROACHMENT OF ITS WALL ONTO KE'OPUOLANI REGIONAL PARK", be ADOPTED; and
2. That County Communication 12-63 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



MIKE WHITE, Chair

Resolution

NO. _____

AUTHORIZING THE ISSUANCE OF AN ENCROACHMENT AGREEMENT AND LICENSE TO THE MAUI FULL GOSPEL KOREAN CHURCH FOR THE ENCROACHMENT OF ITS WALL ONTO KE'OPUOLANI REGIONAL PARK

WHEREAS, MAUI FULL GOSPEL KOREAN CHURCH ("MFGKC") desires to obtain an Encroachment Agreement and License ("Agreement"), attached hereto and made a part hereof as Exhibit "1", for its wall that encroaches onto Ke`Opuolani Regional Park ("Property"); and

WHEREAS, MFGKC's wall minimally encroaches onto the Property, a total of approximately three hundred (300) square feet, as shown in Exhibit "A" to Exhibit "1"; and

WHEREAS, MFGKC and the Department of Parks and Recreation hope to set forth responsibilities regarding the encroachment through the Agreement; and

WHEREAS, in accordance with Section 3.44.020, Maui County Code, the Council of the County of Maui may dispose of County real property; and

WHEREAS, in accordance with Section 3.44.030, Maui County Code, the Council, if it finds that it is in the public interest, may, by a vote of two-thirds of its members, dispose of County real property in a manner it sees fit; now, therefore,

Resolution No. _____


BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby finds that it is in the public interest to authorize the issuance of this Encroachment Agreement and License, and therefore waives all requirements of public auction and public notice, in accordance with Section 3.44.030, Maui County Code; and

2. That it hereby authorizes the Mayor, or his duly authorized representative, to execute the Encroachment Agreement and License, in the form attached hereto as Exhibit "1"; and

3. That certified copies of this Resolution be transmitted to the Mayor, the Director of Parks and Recreation, and to the Maui Full Gospel Korean Church.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY JEOKA
Deputy Corporation Counsel
County of Maui

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return by Mail (X) Pickup () To:

TOTAL NUMBER OF PAGES: 13

TITLE OF DOCUMENT:

ENCROACHMENT AGREEMENT AND LICENSE

PARTIES TO DOCUMENT:

LICENSOR: COUNTY OF MAUI
200 South High Street
Wailuku, Hawaii 96793

LICENSEE: MAUI FULL GOSPEL KOREAN CHURCH
390 Kanaloa Avenue
Kahului, Maui, Hawaii 96732

TAX MAP KEY: (2) 3-6-025:08 & 09

EXHIBIT " 1 "

T.M.K.: (2) 3-6-025:08 & 09

ENCROACHMENT AGREEMENT AND LICENSE

THE ENCROACHMENT AGREEMENT AND LICENSE made and entered into by and between the **COUNTY OF MAUI**, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter, called the "Licensor" or "County", and **MAUI FULL GOSPEL KOREAN CHURCH**, a Hawaii nonprofit corporation, whose address is 390 Kanaloa Avenue, Kahului, Maui, Hawaii 96732, hereinafter called the "Licensee".

WHEREAS, the Licensee is the legal and equitable owner of those certain parcels of land situate in the "New Kahului Town Site", District of Wailuku, Maui, Hawaii, designated as Tax Map Key No. (2) 3-6-025:08 & 09 hereinafter called the "Property"; and

WHEREAS, a portion of the Licensee's wall on the property minimally encroaches on the Licensor's public park property adjacent to the Property, encroaching by a total of approximately 300 square feet more or less, as shown on the metes and bounds description and map showing said Encroachment area, attached hereto as Exhibit "A" and made a part hereof, hereinafter called the "Encroachment Area" or the "Licensed Premises"; and

WHEREAS, the Licensee desires to maintain said portion of the Licensee's wall in the Encroachment Area, until the Licensor desires to make improvements to the property in the vicinity of the Encroachment Area, or until the Licensor desires for any public purpose that the licensee remove the wall from the Licensor's public park.

WHEREAS, the Licensor is willing to accommodate the Licensee's request but only on the terms, covenants and conditions hereinafter set forth.

WHEREAS, the purpose of this Encroachment Agreement and License is to set forth the agreement and the terms under which Licensor allows the Licensee's wall to encroach on Licensor's property.

NOW, THEREFORE, THE LICENSEE COVENANTS AND AGREES WITH THE LICENSOR AS FOLLOWS:

1. Grant of License. The Licensor, for and in consideration of the terms, covenants and conditions contained herein, all on the part of the Licensee to be kept, observed and performed, does hereby license the Encroachment Area (the "Licensed Premises") to the Licensee for the limited purpose of maintaining the existing portion of the Licensee's wall on the Licensed Premises in the Licensor's public park, until the Licensor's Director of the Department of Parks and Recreation, hereinafter called the

"Director", desires to make improvements to the public park in the vicinity of the Encroachment Area, or until the Director desires for any public purpose that the Licensee remove the wall and any appurtenances from the Licensor's Public Park.

2. Use of License. The Licensee shall not make or suffer any strip or waste within the Licensed premises, use or cause the Licensed Premises to be used for any improper offensive, illegal or unlawful purpose or conduct or cause to be conducted within the Licensed Premises any activity which is contrary to or in violation of any governmental law or regulation.

3. Due Care and Diligence. The Licensee shall use due care and diligence to keep the wall and the Licensed Premises in good and safe condition and repair and shall exercise its rights hereunder in such manner as to occasion the least practicable interference with the use of the County right-of-way by the County, its successors and assigns, and members of the traveling public, and shall at times take all necessary safety precautions, measures and controls for the protection of persons and property.

4. Indemnity. The Licensee shall defend, indemnify and hold harmless the County, its officers, agents employees and any person acting on its behalf:(1) from and against any and all claims or demands for loss, liability or damage, including claims for property damage, personal injury or wrongful death, arising from an accident on, about or in connection with the wall and any appurtenances, or the use of the Licensed Premises in the exercise by the Licensee of said rights, or growing out of or caused by any failure on the part of the Licensee to maintain the Licensed Premises in a safe condition; (2) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the rules, regulations, ordinance and laws of the federal state, municipal or county governments; and (3) shall reimburse the County for all costs and expenses, including but not limited to paying the County's attorney's fees and costs, in connection with the defense of such claims.

5. Restoration of Surface. After construction, reconstruction, installation, repair or removal of the wall and any appurtenances, the surface of the Licensed Premises shall be restored by the Licensee to its original condition, to the extent that such restoration is reasonably possible, to the Director's satisfaction. If Licensee's wall shall be damaged beyond repair or needs to be removed, it shall be constructed or reconstructed on Licensee's property.

6. Damage to Improvements. The Licensee shall be responsible for any and all damages to fences, walls, barriers, utility improvements, driveways, roadways or any other improvements, driveways, roadways or any other improvement that result or arise from Licensee's wall of the Licensed Premises under this Encroachment Agreement and License.

7. Nonwaiver. Any forbearance or failure of the County to strictly enforce any condition or covenant of this Encroachment Agreement and License shall not be construed as a waiver of the right of the County to pursue any remedy hereunder for existing or subsequent defaults or for breach of any other similar or different term, covenant or condition herein on the part of Licensee to be observed and performed.

8. Duration. This Encroachment Agreement and License shall be effective as of the date of these presents below written, and shall continue until such time that the Director desires to make improvements to Public Park in the vicinity of the Encroachment Area or until the Director desires for any public purpose that the Licensee remove the wall and any appurtenances from the County's Public Park Property.

9. Abandonment. In the event the Licensee shall at any time completely abandon the Licensed Premises and for a period of six (6) months thereafter fail to use the Licensed Premises, this Encroachment Agreement and License shall terminate automatically without requirement of any further act or documentation of such termination. Notwithstanding the foregoing, the Licensee shall, at the County's written request forthwith execute and deliver to County an instrument suitable for recordation in the appropriate registry of the State of Hawaii as shall be sufficient to evidence the termination and surrender of the Licensed Premises to the County.

10. Surrender. The Licensee shall at the termination of this Encroachment Agreement and License, remove the wall and any appurtenances from the Licensor's Public Park, within thirty (30) days of the termination of this License or such extension of time that may be granted, in its sole discretion, by the Director, and the Licensee shall at the time peacefully deliver unto the Licensor possession of the Licensed Premises, excluding all improvements existing or constructed thereon. Furthermore, upon the termination of this license, should the Licensee fail to remove the wall and any appurtenances from the Licensor's Public Park, the Licensor may remove any and all such property from the Licensed Premises at the sole cost and expense of Licensee, and the Licensee does hereby agree to pay all costs and expenses for such removal, and such costs and expenses shall be a lien on the Licensee's Property until paid in full by the Licensee to the Licensor.

11. Non-Warranty and Acceptance of Premises. The Licensor does not warrant the conditions of the Licensed Premises, as the same is being licensed as is. Licensee accepts the Licensed Premises in the condition they are in at the commencement of this Encroachment Agreement and License, and acknowledges that the Licensor has made no representations concerning the conditions of the Licensed Premises or their suitability for the use intended to be made thereof. The Licensee accepts and assumes all risks with respect to entry upon the Licensed Premises and the conditions thereof, including without limitation, any dangerous conditions (latent or patent).

12. Termination. The Licensor hereby reserves the right to terminate this license at will, by notice from the Director and in his sole discretion, with or without cause, upon the Director giving thirty (30) days advance written notice to the Licensee. If the Licensee shall dissolve or become inactive for a period of ninety (90) days this license shall automatically terminate.

13. Request for Entry. Whenever the repair and maintenance of Licensee's wall requires entry into Licensor's property, the Licensee shall first request such permission from Licensor in writing.

14. Nature of this License. The Licensor and the Licensee hereby acknowledge and agree that the nature of this license is as follows:

a. This Encroachment Agreement and License grants the permission of the Licensor for the Licensee to enter the property of the Licensor for the limited purpose of keeping Licensee's wall in its current location as depicted in Exhibit "A".

b. This Encroachment Agreement and License grants to the Licensee the privilege to use the Licensor's property for the particular purpose set forth herein.

c. This Encroachment Agreement and License does not convey to the Licensee any interest in the land of the Licensor. This license is not an easement and it is not a lease. The Licensee holds no estate in the property of the Licensor. At all times hereunder, the Licensor retains legal possession of the Licensed Premises, and the Licensee has only a privilege to enter for the particular purpose stated herein.

15. Definitions. As used herein, unless clearly repugnant to the context:

a. "Licensee" shall mean and include the Licensee named herein, its agents, representatives, heirs, devisees, personal representatives, successors or any other permitted assigns.

b. "Licensor" shall mean and include the County of Maui, its officers, agents and assigns.

c. "Encroachment Area" or "Licensed Premises" means the land hereby licensed upon which the Licensee's existing wall encroaches on the County's Public Park, as shown on the Map showing said licensed area attached hereto as Exhibit "A" and made a part hereof.

d. "Waste" shall be deemed to include, but not limited to:

1. Permitting the Licensed Premises, or any portion thereof, to become unduly eroded and/or failure to take proper precautions or make reasonable effort to prevent or correct same;

2. Permitting any material increase in weeds in uncultivated portions thereof.

16. Gender. The use of any gender shall include all genders, and if there be more than one (1) Licensee, then all words used in the singular shall extend to and include the plural.

17. Paragraph Headings. The paragraph headings throughout this Encroachment Agreement are for the convenience of the Licensor and the Licensee and are not intended to construe the intent or meaning of any of the provisions thereof.

18. Hawaii Law. This Encroachment Agreement and License shall be construed and governed by the laws of the State of Hawaii.

19. Entire Agreement; Amendment. This written Encroachment Agreement and License represents the entire agreement of the parties hereto. This Encroachment Agreement and License may be amended only by written amendment executed by both parties.

20. Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

21. Insurance. Licensee shall procure, at Licensee's own cost and expense, and maintain during the entire period of this Agreement, a policy or policies of comprehensive liability insurance issued by an insurance company authorized to do business in the State of Hawaii, or by a company not authorized to do business in the State of Hawaii only through a general insurance agent or broker rated not less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy as evidenced by issuance of a "Policy Endorsement", shall name the Licensor, its officers, employees and agents as "Additional Named Insured", and shall include a duty to defend the Licensor, its officers, employees and agents against any loss, liability, claims and demands for injury or damage, personal injury, or

wrongful death, arising out of, or in connection with Licensee's actions and/or use of the Licensed Premises under this Agreement. The policy or policies shall cover the entire Licensed Premises, including any improvements on the Licensed Premises in the control or use of the Licensee.

Unless otherwise agreed to by the Licensor, through the joint decision and discretion of the Director of Parks and Recreation and the Director of Finance, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit of liability coverage of \$1,000,000; and
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Licensee shall furnish Licensor with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify Licensor of any intention to cancel the policy no later than sixty (60) days prior to actual cancellation. The procuring of this policy shall not release or relieve Licensee of Licensee's responsibilities under this Agreement or limit the amount of Licensee's liability under this Agreement. Any notice to cancel shall be sent to Licensor no later than sixty (60) days prior to the date of cancellation. Licensee shall cause the policy or policies for liability insurance to be delivered to Licensor within thirty (30) days of execution of this Agreement by Licensee.

If Licensee fails, refuses, or neglects to obtain such insurance or to maintain the same, Licensor shall have the right, but not the obligation, to procure such insurance, and the costs thereof with interest shall be paid by Licensee to Licensor upon demand. If during the term of this Agreement higher limits of insurance than those mentioned herein above shall be appropriate, customary and generally required for similar Licensed Premises utilized for similar uses, then upon request by Licensor, Licensee shall procure such insurance with higher limits.

In addition to the insurance carried by Licensee during the course of any construction, alteration, or repair work undertaken by a contractor selected by or for Licensee, such contractor shall carry public liability insurance with limits of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000).

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this _____ day of _____, 2012.

LICENSOR:


COUNTY OF MAUI

By _____
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED

Director Department of Parks and Recreation

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA

Deputy Corporation Counsel
County of Maui

STATE OF HAWAII
COUNTY OF MAUI

)
) SS.
)

This 13-page ENCROACHMENT AGREEMENT AND LICENSE, dated _____, was subscribed and sworn to before me, _____, on _____, in the Second Circuit of the State of Hawaii, by _____, personally known to me (or 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.

(notary's signature)

(print/type name of notary)
Notary Public, in and for said County and State.

My commission expires:

LICENSEE:

Kim Hankyu
By: Hankyu Kim
Its: Pastor

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

This 13-page ENCROACHMENT AGREEMENT AND LICENSE, dated undated, was subscribed and sworn to before me, MELODY A. ANDRION, on FEB 03 2012, in the Second Circuit of the State of Hawaii, by HANKYU KIM, PASTOR OF MAUI FULL GOSPEL KOREAN CHURCH, personally known to me (or 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.



Melody A. Andrion
(notary's signature)

MELODY A. ANDRION
(print/type name of notary)
Notary Public, in and for said County and State.

My commission expires: **JUL 02 2012**

EXHIBIT "A"

DESCRIPTION
"CMU" LICENSE AREA
(FOR CMU WALL PURPOSES)
AFFECTING LOT A-1 OF THE RECREATIONAL COMPLEX SUBDIVISION

All of that certain parcel of land, being a "CMU" License Area for CMU (Hollow Tile) wall purposes over, under and across a portion of Lot A-1 of Recreational Complex Subdivision, being a portion of Royal Patent 1996, Land Commission Award 420 to Kuihelani, situated at Owa and Kalua, Kahului, Wailuku, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at the west corner of this parcel of land, on the northwesterly boundary of said Lot A-1 of Recreational Complex Subdivision, said point also being the east corner of Lot 5-52 and the south corner of Lot 5-53 of said Kahului Town Development – Fifth Increment, File Plan 541, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being:

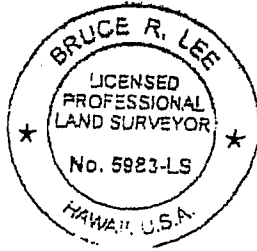
6,277.14 Feet North
4,163.20 Feet East

and running by azimuths measured clockwise from true South:

1. 250° 00' 00" 76.49 feet along Lots 5-53 and 5-54 of said Kahului Town Development – Fifth Increment, File Plan 541, along the remainder of said Royal Patent 1996, Land Commission Award 420 to Kuihelani;
2. 340° 00' 00" 2.54 feet along the remainders of said Lot A-1 of Recreational Complex Subdivision and said Royal Patent 1996, Land Commission Award 420 to Kuihelani;
3. 68° 41' 00" 76.51 feet along the remainders of said Lot A-1 of Recreational Complex Subdivision and said Royal Patent 1996, Land Commission Award 420 to Kuihelani;
4. 160° 00' 00" 4.29 feet along the remainders of said Lot A-1 of Recreational Complex Subdivision and said Royal Patent 1996, Land Commission Award 420 to Kuihelani to the point of beginning and containing an area of 262 Square Feet, more or less.

Prepared by:

NEWCOMER-LEE
LAND SURVEYORS, INC., a Hawai'i Corporation



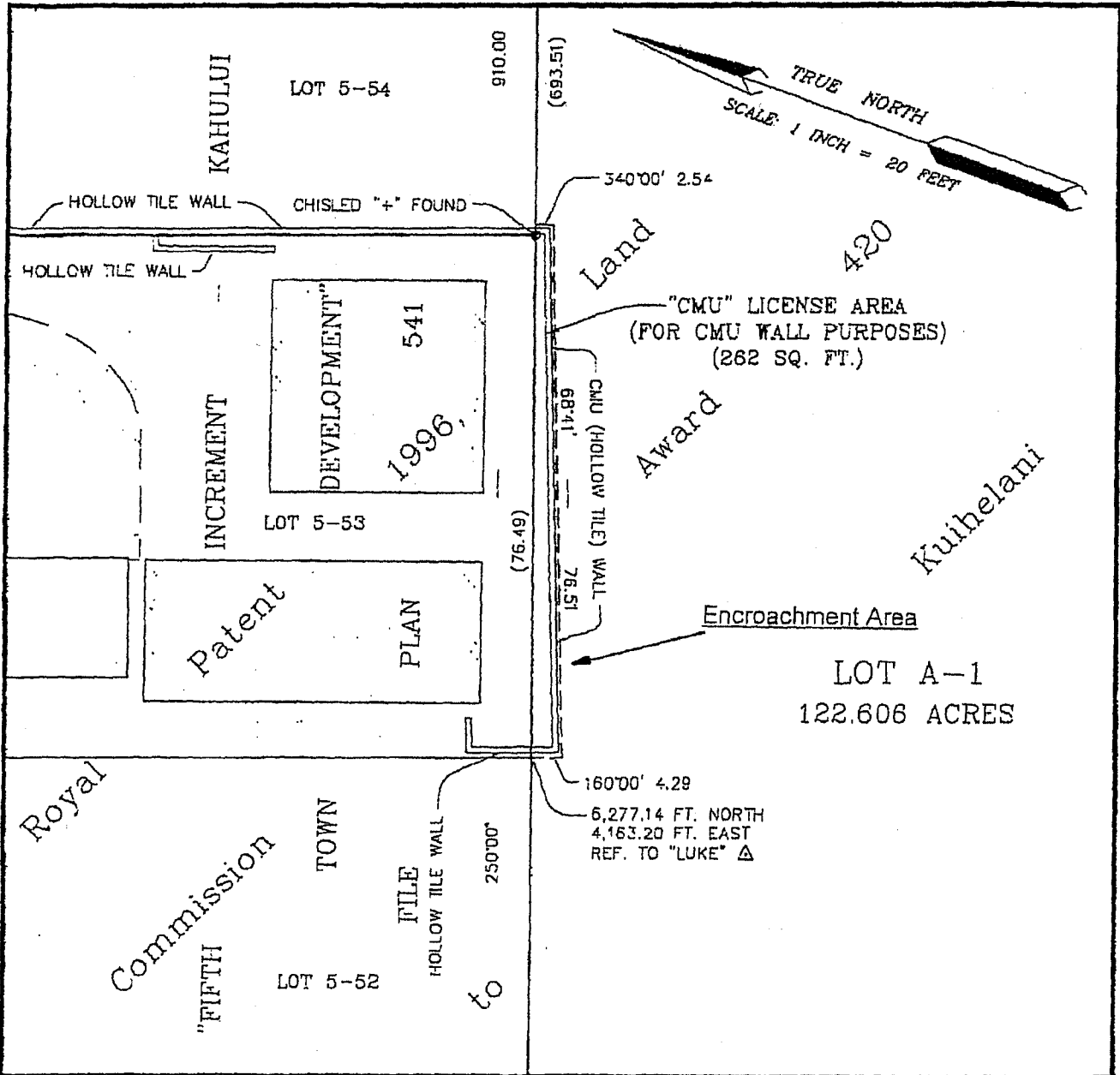
This description was prepared from a survey on the ground performed by me or under my supervision.

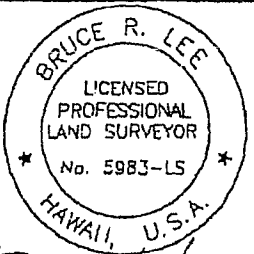
Bruce R. Lee 04/12

BRUCE R. LEE

Licensed Professional Land
Surveyor Certificate No. 5983-LS

1/25/12
KOREAN CHURCH
File 10-9015
10-9015 Korean Church Subd. CMU-1 License




 THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION.

PLAT SHOWING
 "CMU" LICENSE AREA
 (FOR CMU WALL PURPOSES)
 AFFECTING LOT A-1 OF THE
 RECREATIONAL COMPLEX SUBDIVISION
 SITUATED AT OWA AND KALUA, KAHULUI, WAILUKU, MAUI, HAWAII

PREPARED FOR:
 MAUI FULL GOSPEL KOREAN CHURCH
 390 KANALOA AVE.
 KAHULUI, HAWAII 96732

PREPARED BY:
 NEWCOMER - LEE
 LAND SURVEYORS, INC.
 149B LOWER MAIN STREET, SUITE E,
 WAILUKU, MAUI, HAWAII 96793

T.M.K.:(2) 3-B-007: PORTION OF 001

SCALE: 1 INCH = 20 FEET

DATE: JANUARY 25, 2012

8.5"x11"

DWG NO. 9015-EASE JOB NO. 10-9015