

# The majority's unable to bring off a winner

By Jan TenBruggencate  
Advertiser Kauai Bureau

LIHUE — Many of the people protesting the Nukolii resort development are angry, largely because they feel that democracy isn't working, that the majority is being ignored by collusion between government and developer.

It's particularly galling to the veteran anti-development individuals, who have had their protests ignored by government on grounds the majority felt otherwise, only to find themselves with a solid majority and still losing.

Who's to blame? The county and state governments, say several inside the Save Nukolii movement.

The developer, too, is at fault, they say, but it has acted as any developer

would — to protect its investment.

The government, on the other hand, is charged with protecting the public, and there is a feeling among many that on the Nukolii issue, it has failed.

The disenchantment goes all the way back to the beginning, when a Maui-based hui bought the land from Amfac. The hui included several top state and Maui county officials tied to the political faction that held the governor's office.

The state Land Use Commission — appointed by the governor — put the 60 acres of agricultural beachfront land into the urban district. Amfac properties agent Earl Stoner had testified Amfac owned the land and Amfac intended to develop it. Stoner was later allowed to join the hui.

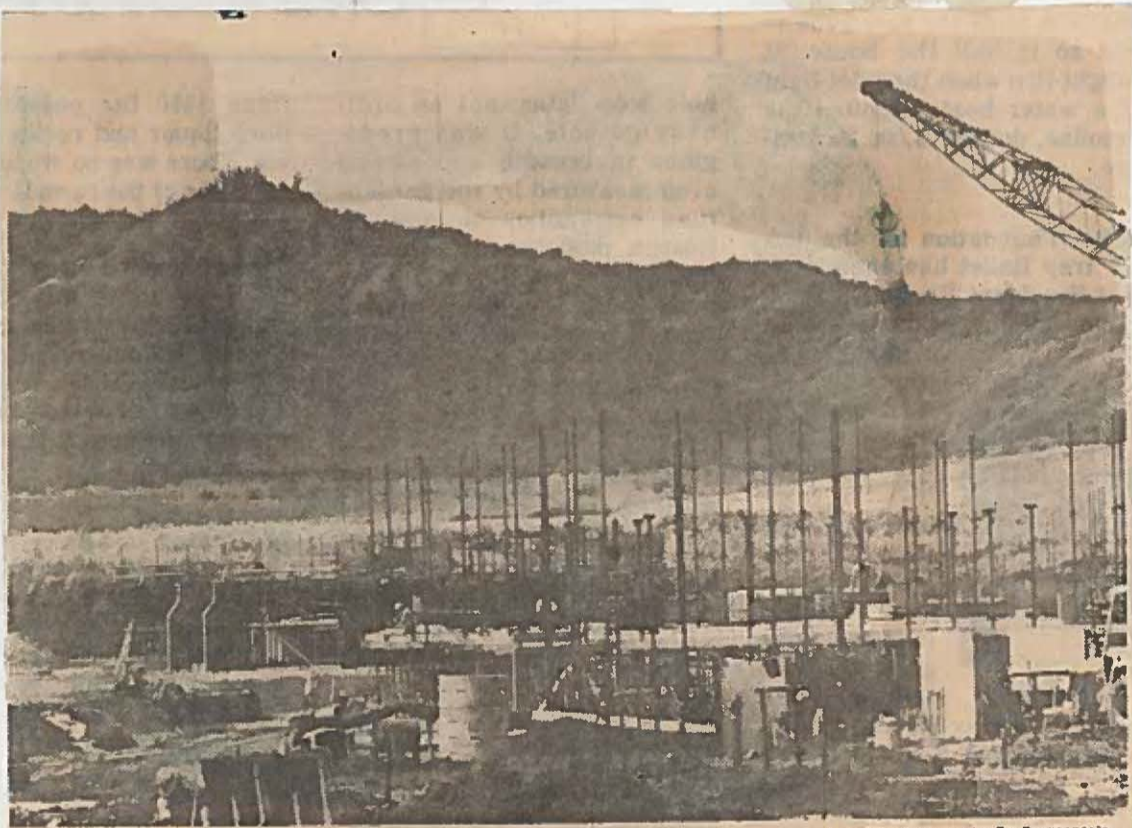
Most Kauai residents concerned with

development were preoccupied that year with the proposed 1,000-acre resort project at Mahaulepu on the island's south shore. Just one speaker opposed the Nukolii site redistricting.

When the Land Use Commission put the land into the urban district, the Maui-based hui already had sold its agreement of sale to Pacific Standard Life Insurance Co. of California for \$5.2 million — a \$4 million profit.

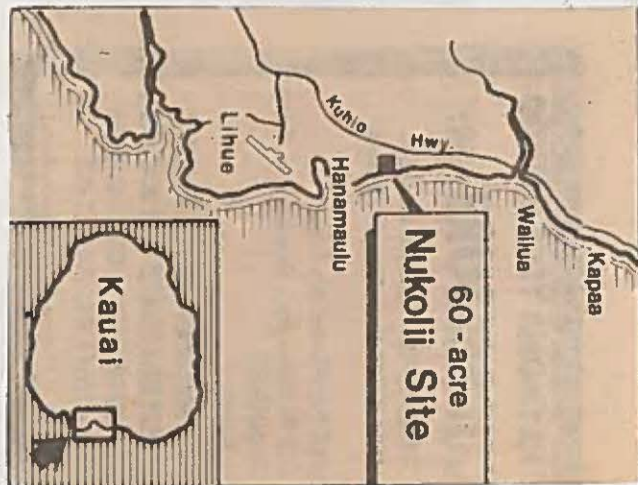
Attention to Nukolii increased as land use decisions moved to the county level, but in 1977 the county changed the General Plan designation for the site from Agriculture to Resort. Protest suddenly blossomed.

The subject of the controversy is an  
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Advertiser photos by Jan TenBruggencate

As its opponents fume, construction of the resort at Nukolii proceeds.



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Nukolii

# The solid majority that was still a loser

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unremarkable location. Sixty acres of oceanfront land, part of which is marshy and floods regularly. One end of the property is known as Kawailoa. Nukolii was the name of a dairy that operated there until the late 1960s.

The shoreline is frequently windy. The reef comes right up to the water's edge, making it virtually unswimmable. Salty air and soil limit its agricultural use. Until construction started, a few horses were pastured there and model airplane buffs did their aerobatics on weekends at the site.

The zoning of the area would come before the 1979-1980 Kauai County Council, and in the 1978 elections voters gave their first indication of the strength of their feelings on the issue.

Four of the seven members of the new council had indicated they opposed the project. They were Stan Baptiste, Eddie Sarita, Rodney Yadao and JoAnn Yukimura. It was the first majority Kauai's voters had put together against development.

But on Feb. 1, 1979, the day of the crucial vote, Baptiste said he was convinced the project was needed to charge the county's economy. He joined Jerome Hew, Burt Tsuchiya and Robert Yotsuda in support of the issue. The mayor signed the rezoning to resort the very next day.

The council had cut the project from 1,500 rooms to a 25-acre site to include a 150-unit condominium and 350-room hotel.

Pacific Standard Life's Clifford Gamble said the firm would proceed forthwith on permits and other approvals.

Opponents of the project decided they'd try to exercise the county's initiative-referendum provisions to stop the development. By February 1980, they'd collected some 5,000 signatures in support of halting the project.

The council refused to change its decision on the zoning and refused to allow the referendum to take place in the September Primary election. It would go in November, in the General Election.

The Save Nukolii Committee tried to get the county to hold up approving permits and subdivisions pending the election, but was unsuccessful.

Ironically, in the General Election the voters would change the county charter to suspend ordinances that are subjects of referendums. Had the rule been in effect 10 months earlier, Nukolii might have been stopped.

The Save Nukolii Committee went to court several times to protest the progress of the project.

In one case, the developers submitted an improper wastewater treatment system in order to get a building permit, and later replaced it with a one that was okay.

When Save Nukolii went to court to try to have the building permit invalidated, the county said it never had any authority over such systems. Thus, it had no right to make a proper plant a requirement for a building permit. The permit was left standing.

The whole to-do over permits was based on a paragraph in the county charter that would allow a developer to complete his project in spite of a referendum, if he'd gotten enough work done to vest his rights.

On election day, the voters left little doubt about their feelings.

- Nukolii's resort zoning was reversed by a thundering 10,794 to 5,618.

- The charter amendment passed that suspends ordinances that are the subjects of referendum.

- Stan Baptiste was defeated and two more anti-Nukolii people were elected to the council — Jeremy Harris and Bill Kaipō Asing. (Yukimura, however, was out, having lost a primary mayoral bid against

Eduardo Malapit.)

The Save Nukolii Committee demanded Malapit comply with the referendum results by immediately stopping development at Nukolii. He refused, saying a court still had to decide whether there were vested rights.

When Judge Kei Hirano last month ruled there were vested rights, it came as no surprise to the committee, which is appealing the decision.

The committee has lost virtually every time it has gone to court, leading many of its members to resign

themselves to the view they'll get no justice in Hawaii's courts.

Many of them now suffer from no small amount of confusion. They've got the support of a clear majority of the people, but they're losing at every turn.

If the zoning power was designed to allow the people of a community to decide how their community should change, it's not working, they say.

They've used every weapon the law gives them to say they don't

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The beach at Nukolii: It's frequently windy, and the reef comes right up to the water's edge.

Advertiser photo by Jan TenBruggencate