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# Developers seek delay in Nukolii action

By Jan TenBruggencate  
Advertiser Kauai Bureau

LIHUE — Can a lower court choose to hold off doing what the state Supreme Court tells it to do?

That's what the developers of the controversial Nukolii resort are asking Judge Kei Hirano to do. Kauai County's attorneys, though, say he can't, and that only the Supreme Court itself can put a hold on its orders.

The issue comes before Hirano Feb. 4. It's the latest in the years-long Nukolii squabble.

Briefly, the voters in 1980 changed the Nukolii resort site to agricultural zoning, but Hirano later allowed development to continue, saying the developers had gone far enough that it would be unfair to stop them. The state Supreme Court disagreed, and ordered construction halted, building permits revoked, the county to repay a development fee and any other options Hirano saw fit.

The Supreme Court Dec. 27 refused to reconsider its decision, and developers Pacific Standard Life Insurance Co. and Graham Beach Partners said they'll ask the U.S. Supreme Court to review the case.

At the same time, the developers asked Hirano not to do anything final. Specifically, they asked that he defer the state Supreme Court's order to revoke building permits and to consider other options. And they asked that construction crews be allowed back on the site to stabilize it so building could resume if the U.S. high court rules in their favor.

The developers have completed a 150-unit condominium called Kauai Beach Villas, and had started putting up a 350-room hotel to be managed by Hilton.

The builders want to patch some faulty concrete, protect exposed metal from rusting and do similar work to halt deterioration on the hotel site.

"The developers seek no strategic advantage in this litigation in connection with the remedial

work and the 'mothballing' measures," the court documents say.

Kauai County, represented by deputy county attorney Michael Abe, hasn't taken a position on those specifics. It will have a position by Feb. 4 for the hearing, Abe said.

But the county feels that Hirano doesn't have the right to ignore — even temporarily — an order from the Hawaii Supreme Court.

The Committee to Save Nukolii, which got the issue on the 1980 ballot and took it up through the Hawaii Supreme Court, hasn't filed court documents indicating its position. But on this issue, the committee presumably will agree with the county.

It is the first time the county and the developers have split on an issue of substance in the case.