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January 25, 2008

Henry Eng, Director
Department of Planning and Permitting
City and County of Honolulu
650 South King Street
Honolulu, HI 96813

RE: Royal Hawaiian Hotel and Sheraton Waikiki Master Plan Improvements, TMK (1) 2-6-2: 005, 006 and 026, Waikīkī, Kona, O'ahu

Dear Mr. Henry Eng,

The Office of Hawaiian Affairs (OHA) is in receipt of your December 26, 2007 submission concerning the Royal Hawaiian Hotel and Sheraton Waikiki Master Plan Improvements (Master Plan) and offers the following comments:

The Department of Planning and Permitting is in the process of accepting a Special Management Area (SMA) permit for the renovation of two (2) existing resort hotels consisting of exterior improvements to visitor arrival and registration areas, on-site vehicular and pedestrian circulation, and pool, garden and recreation areas. A Shoreline Setback Variance (SSV) is also required for the portion of work within the 40-foot shoreline setback area.

Our office is concerned about the potential impacts that this proposed project may have on cultural resources, natural resources, water quality, and effects on traditional and cultural rights and practices in the Waikīkī area.

Burials and Cultural Resources Protection

OHA initially submitted comments concerning this project to Wilson Okamoto Corporation (WOC) on December 26, 2006 during the Pre-Consultation Stage for the Draft Environmental Assessment of this project. The initial assessment of "[n]o significant impacts are anticipated with the construction...of the proposed improvements" was not shared by our office. We expressed concerns over the moderate to high potential of encountering Native Hawaiian cultural deposits and burials at this particular site. Therefore, we did not concur with that determination.

MISC. COM. 166

During the Draft Environmental Assessment (DEA) process our office again commented on the aforementioned project through a letter to WOC dated September 24, 2007. At that time our office noted continued concerns over the ground disturbance aspects of the proposed project. The DEA indicated that disturbance would occur on previously disturbed land. It also stated that fill or clean fill would be used. Thus, we supported the use of an archeological monitoring program for any anticipated ground disturbance, and requested the opportunity to review the archeological monitoring plan.

OHA asks that, in accordance with Section 6E-46.6, Hawaii Revised Statutes (HRS) and Chapter 13-300, Hawaii Administrative Rules (HAR), if the project moves forward, and if any significant cultural deposits or human skeletal remains are encountered, work shall stop in the immediate vicinity and the State Historic Preservation Division (SHPD/DLNR) shall be contacted.

Our office continues its efforts to advocate for the protection of the natural and ocean resources and against the impacts that development and redevelopment present to our environment. OHA has previously commented on the Hilton Hawaiian Village Lagoon, which is in the near vicinity of the proposed project area. In a July 5, 2007 letter to the Commission of Water Resources Management – Department of Land and Natural Resources, State of Hawai'i, concerning the water use permit for the aforementioned lagoon, our office expressed concerns over the discharge of sediments and overall water quality of the state waters offshore of this particular project. Many Native Hawaiians continue to engage in traditional customary practices in the general vicinity of the Hilton lagoon.

Coastal Zone Objectives and Policies

The finding in the application for the SMA permit and the SSV permit, along with the DEA completed earlier in this project, has brought forth many inconsistencies with applicable environmental laws.

Through the Coastal Zone Management Act of 1972 ("CZMA"), Congress found, among other things, that "the habitat areas of the coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations." 15 U.S.C. 5 1451(d). Congress declared a national policy to, among other things, "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." 15 U.S.C. § 1452(1). The CZMA also recognizes that the individual states play a key role in the "protection and use of the land and water resources of the coastal zone. . . ." 15 U.S.C. § 1451(i).

Therefore, in order to meet its goals, the CZMA requires that "each federal activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone

shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." 16 U.S.C. § 1456(c)(l)(A).

The State of Hawai'i's Coastal Zone Management Program ("CZMP") was approved for CZMA purposes in 1978, following the adoption of HRS chapter 205A. Thus, the applicant's proposed Master Plan Improvements must be consistent with Hawai'i's CZMP. Enforceable objectives and policies include "protect[ing] valuable coastal ecosystems . . . from disruption and minimizing adverse impacts on all coastal ecosystems," "protect[ing] beaches for public use and recreation," and "promot[ing] the protection, use, and development of marine and coastal resources to assure their sustainability." HRS § 205A-2(b)(4), (9), (10).

Through the express policy of the CZMA, the State has made clear that coastal open spaces and scenic views are environmental resources that must be protected by State and County agencies. HRS § 205A-2(c)(3)(C) (Stating that one policy of the CZMA is to "[p]reserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources"). Furthermore, prior to issuing a Special Management Area Use Permit (SMA) permit, the Department of Planning and Permitting (DPP) must consider the "cumulative effects of individual developments" in determining whether the proposed project will have a "substantial adverse environmental or ecological effect." HRS § 205A-26(2)(A).

The federal CZMA mandate requiring consistency with state coastal zone management programs also includes cumulative effects. "Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable." 15 C.F.R. § 930.1 l(g).

Thus, the cumulative effects of previous actions taken, combined with this proposal and other reasonably foreseeable projects must be considered. If adverse effects on the state's open space resources are found, the SMA permit may not be issued unless the "adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests." HRS § 205A-26(2)(A). It is OHA's position that this proposed project is not only inconsistent with CZMA and CZMP policies and objectives, an SMA permit cannot be issued for it.

The cumulative effects of development on the coast have risen to a level where further construction, without mitigation, will result in substantial adverse effects to open space and scenic resources. The applicant has built so close to the public shoreline that there is no more public trust beach area in front of their property. In a November 7, 2007 Cultural Impact Assessment invitation to comment on a proposed beach restoration, in exactly the same area, the same applicant states:

> Over the years, and with hotel and seawall construction, Gray's Beach has eroded until there is essentially no beach remaining. The existing shoreline fronting the Sheraton Waikiki Hotel is one of the worst segments along the Waikīkī shoreline with respect to the amount of usable beach and lateral access along the shore. What little beach remains is typically underwater and waves breaking against the seawall create splash that discourages people from using the pedestrian walkway that runs across the seawall.

OHA, therefore, disagrees with the Discussion section on page 11 of the Master Plan that states, "The proposed action reflects an overall conservation ethic and practice of stewardship in the protection, use and development of coastal resources that are ecologically and environmentally sound and economically beneficial." Developing to the point of having to apply for an SMA permit and shoreline setback variances while also destroying what public beach used to be there is not 'stewardship,' 'protection' or 'environmentally sound'.

It is wholly inconsistent to have allowed a private land owner to develop within the shoreline setback to the point of unblushingly eradicating the public shoreline itself, and then allow them to continue to do so. The applicant's project description constantly refers to "guests and visitors" reaping the benefit from this proposed project. OHA strained to find reference to a benefit relayed to residents. Therefore, OHA wonders about the benefits to the public (and our beneficiaries) while openly pointing to the detrimental losses we have incurred and continue to bear in this area.

This project consists of renovations to a "visitor/guest" (Project Description, page 3) beachside pool located within the shoreline setback designed to "enhance the ocean experience from the hotel" (Ibid.). This pool area bar will be renovated with a "Hawaiian sense of place" theme. (Ibid.) OHA is bothered by this tender irony in that this applicant has eradicated our beneficiaries (and our State's) public trust beach, proposes to not only continue to do more projects in protected areas, but then contemplates to "restore" the beach, thereby potentially changing the shoreline boundary and creates an exclusive use of this area. This is absurd. Allowing this applicant to expand and construct pools (the beachside pool and the resort pool), water slides, bars, decks, and lawn areas all within the shoreline setback completely violates the reasons we have the shoreline setback, CZMP/CZMA, and SMA rules and regulations.

<u>This Project Should Not Be Segmented</u>

It is also reasonably foreseeable (because the applicant has already proposed to do so) that this applicant will attempt to "restore" the beach area in front of their property. This cumulative impact must be considered under the CZMP and the SMA permit regimes. If we first allow the applicant to build within the shoreline setback and then change the shoreline itself, it will be totally inconsistent. OHA also asks why the proposed Gray's Beach restoration was not included

in the Royal Hawaiian Hotel and Sheraton Waikiki Master Plan. The timing of OHA's receipt of the documents and the resulting comment letters that we have written indicate that the applicant knew about both of these projects within the same timeframe.

The materials sent by the applicant on November 7, 2007 along with the invitation to comment for a Cultural Impact Study for the beach restoration included a map showing two access corridors for construction machinery and materials (enough for three T-head groins spanning 500 feet of shoreline at 3.7 feet above sea level, and enough sand to create one acre of dry beach area). Access corridor two (the Diamond Head side) would run right over the lawn area and pool that is proposed in this application. (see attachment) Surely the applicant has thought of this, and OHA again queries as to how these two projects relate. Our suggestion is that the beach restoration and these Master Plan Improvements are not separate projects. It is the same applicant, the same project area, and projects that do not just touch and concern each other - they literally overlap each other. The cumulative effects from these proposals warrant equitable environmental review. It is OHA's position, therefore, that they not be segmented into two review processes.

Shoreline Areas Are Being Heavily Impacted

Additionally, the global temperature is projected to rise by 3.6° to 9° F, and sea level to rise by more than 31.5 inches during the next two centuries. (Michener, W.K., E.R. Blood, K.L. Bildstein, M.M. Brinson, and L.R. Gardner. 1997) Sea levels have risen by 4 to 8 inches during the past century. (Ibid.) The Intergovernmental Panel on Climate Change in 2001 predicted a sea level rise of 3.5 inches to 34.6 inches by the year 2100 unless greenhouse gas emissions were reduced substantially. They also suggested that continuing greenhouse gas emissions could trigger polar ice-cap melting after 2100, accompanied by sea level rise greater than 16 feet. More recent modeling indicates that melting could occur faster than the IPCC predicted. (Overpeck, J.T., B.L. Otto-Bliesner, G.H. Miller, D.R. Muhs, R.B. Alley, and J.T. Kiehl. 2006; Paleoclimatic Evidence for Future Ice-Sheet Instability and Rapid Sea-Level Rise, Science 311:1747-1750.) In fact, the August 10, 2007 issue of "The Cryosphere Today" posted data that shows that sea ice in the northern hemisphere has plunged to the lowest levels ever measured. U.S. polar specialists added that they expect the record low to be "annihilated" by this summer's end. CNN recently reported on December 11, 2007 that, "At this rate, the Arctic Ocean could be nearly ice-free at the end of summer by 2012, much faster than previous predictions."

Shorelines and beaches are disappearing all over the world, and Hawai'i is no exception. OHA suggests that we prepare for this. Hardening shorelines is not a reliable way to prevent shoreline loss. The most effective solution for this ever-increasing problem is to not build in dynamic shoreline areas or accommodate existing structures, if need be. We are already seeing more tension around shoreline areas, and the worst possible thing we can do is to allow for more building within the SMA and shoreline setback. Expansion of existing uses is nonsense.

This is a clear case where the property in question is not a shoreline-dependant facility, nor necessary for crops, aquaculture or landscaping. It is also not in the public interest to grant a variance. Further, this particular property may not be deprived of reasonable use of the land by being required to comply with the shoreline setback if we allow for existing uses. Allowing expansion of these uses in the shoreline area is contrary to the law and would be foolhardy in light of not just cumulative impacts to a public trust resource, but in light of current environmental circumstances.

Water Quality

All Hawai'i state waters are classified as Class A or Class AA. Class A waters have strict pollution discharge regulations to protect them for recreational and aesthetic enjoyment. According to the standards for Class A waters, discharges are not permitted unless they have received the best degree of treatment or control compatible with the established criteria for the receiving water. Class AA waters have regulations against discharge to protect the waters in a natural pristine state with an absolute minimum pollution or alteration of water quality from any human source or action, according to the state Department of Health. (HAR 11-54-03 c 2- class A)

The State waters offshore of the project area are designated as Class A waters. According to HAR 11-54-03, any discharge needs to receive the best degree of treatment with appropriate Best Management Practices in order to mitigate the impacts of storm water discharge impact on the marine environment. It is especially true because these waters are heavily used for recreational purposes by the general public, and for constitutionally protected Native Hawaiian traditional and customary rights and practices.

The State Department of Health, Clean Water Branch (CWB) requires that any project and its potential impacts to State waters must adhere to certain standards. The Anti-degradation policy (HAR, Section 11-54-1.1) requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected. According – the administrative rules, the water must be maintained at a quality that supports shellfish, aquatic life, etc. Only the director can allow the lowering of the quality of water through a full participatory planning process involving the public.

The administrative rules also outline the Designated Uses (HAR, Section 11-54-3), which are determined by the classification of the receiving State waters. It is the objective of Class A waters that their use for recreational purposes and aesthetic enjoyment be protected. Any other use shall be permitted as long as it is compatible with the protection and propagation of fish, shellfish, and wildlife, and with recreation in and on these waters. These waters shall not act as receiving waters for any discharge which has not received the best degree of treatment or control compatible with the criteria established for this class.

HAR §11-54-4(a), the basic water quality criteria applicable to all waters, warrants that all waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including soil particles resulting from erosion on land involved in earthwork. Our office recommends that this administrative rule must be adhered to during all phases of construction on this project.

Stormwater

OHA also recommends the use of a stormwater management system that would filter pollutants out and slow the amount of sediments entering our waters. Generally, OHA wishes to see stormwater as a resource to be captured and conserved rather than a nuisance to be channeled and drained away. As such, surface runoff generated by the facility should be stored or re-used for on-site needs, such as landscaping, as part of a design concept attempting to reduce or eliminate any demands on the municipal storm drainage system. Otherwise, as stormwater travels down a drainage system, it accumulates industrial waste, pesticides, oils, and chemicals. These pollutants quickly settle into the nearshore sediments and are re-suspended into the water column when disturbed.

OHA also points out that many marine species hold a revered and special status for Native Hawaiians. OHA views the marine species that will be impacted by this proposed project as 'aumākua and kinolau. 'Aumākua are family or personal gods, deified ancestors who take the form of marine animals. Between these 'aumākua and mortals, a symbiotic relationship exists in which we are not to harm them and they, in turn, will warn, reprimand and protect us in dreams, visions and calls. Kinolau are the supernatural forms or bodies that gods can take. OHA views marine species, particularly whales and turtles, as both genealogically related to Native Hawaiians and divine. As such, we require that they not be harmed by this proposed project.

Suggestions for Renovations

OHA further points out that renovation to existing structures should consider that because this project is so close to the coast, all outdoor lights should be fully shaded or use full cut-off styles. Uplighting should be avoided. Every effort should be made to avoid lighting situations where light glare projects upwards or laterally. Large, high-intensity floodlights located on building tops or poles should also be avoided. Use of amber colored or other color (such as blue or green) filters or bulbs should be used to assist in decreasing risk of seabird attraction and the potential confusion of honu. For the same reasons, OHA also recommends the use of motion detection-activated lights to prevent lights from being on for extended periods of time. Also, the painting of buildings and other facilities should be in earth tones; white or reflecting colors are to be avoided. No lighting should be cast into the water.

OHA would also like to point out that the applicant should consider that by 2020, 20% of Hawai'i's electricity is to be from renewable sources.[1] Further, the Energy Advisory Committee's first of three major concerns for Hawai'i listed in their 2005 Functional Plan is the State's over dependency on oil and fossil fuels. The committee also lists these two objectives:

> A) To moderate the growth in energy demand through conservation and energy efficiency.
>
> B) To displace oil and fossil fuels through alternate and renewable energy resources.

As such, OHA recommends the use of photovoltaic and small wind harvesting electrical generation for peripheral uses such as parking lot lighting. Solar energy should also be incorporated into the building plans. During construction, OHA urges the use of recyclable materials: steel studs and structural members, and wood products from certified sustainable sources.

The Leadership in Energy and Environmental Design (LEED) Green Building Rating System is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings. LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality.

Conclusion

In closing, a number of environmental and cultural issues have arisen as a result of the proposed undertaking by the applicant, Kyo-ya Hotels and Resorts, LP. OHA has a constitutional obligation to preserve and protect environmental and cultural resources on behalf of our Native Hawaiian beneficiaries.

We recommend that no Shoreline Setback Variance should be issued for this project. Although the existing pool was constructed before the existence of the law, we urge that no new uses shall be permitted in the 40-foot shoreline setback area, especially an expanded use as being proposed. The overall project does not fully comply with the policies, goals, objectives, and intent of Federal and State CZM Programs. Although the goals of ocean recreation may be supported by the proposed project, it does not align itself with all the goals and objectives of the CZMP. No goals or objectives should be compromised during the evaluation of compliance and alignment with any environmental laws or programs.

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[1] See Act 95, Session Laws of Hawai'i 2004, which set that new original renewable portfolio standard goal.

Thank you for the opportunity to comment. If you have further questions or concerns, please contact Jason Jeremiah, Policy Advocate-Preservation, Native Rights, Land and Culture, at (808) 594-1816 or jasonj@oha.org.

Aloha,

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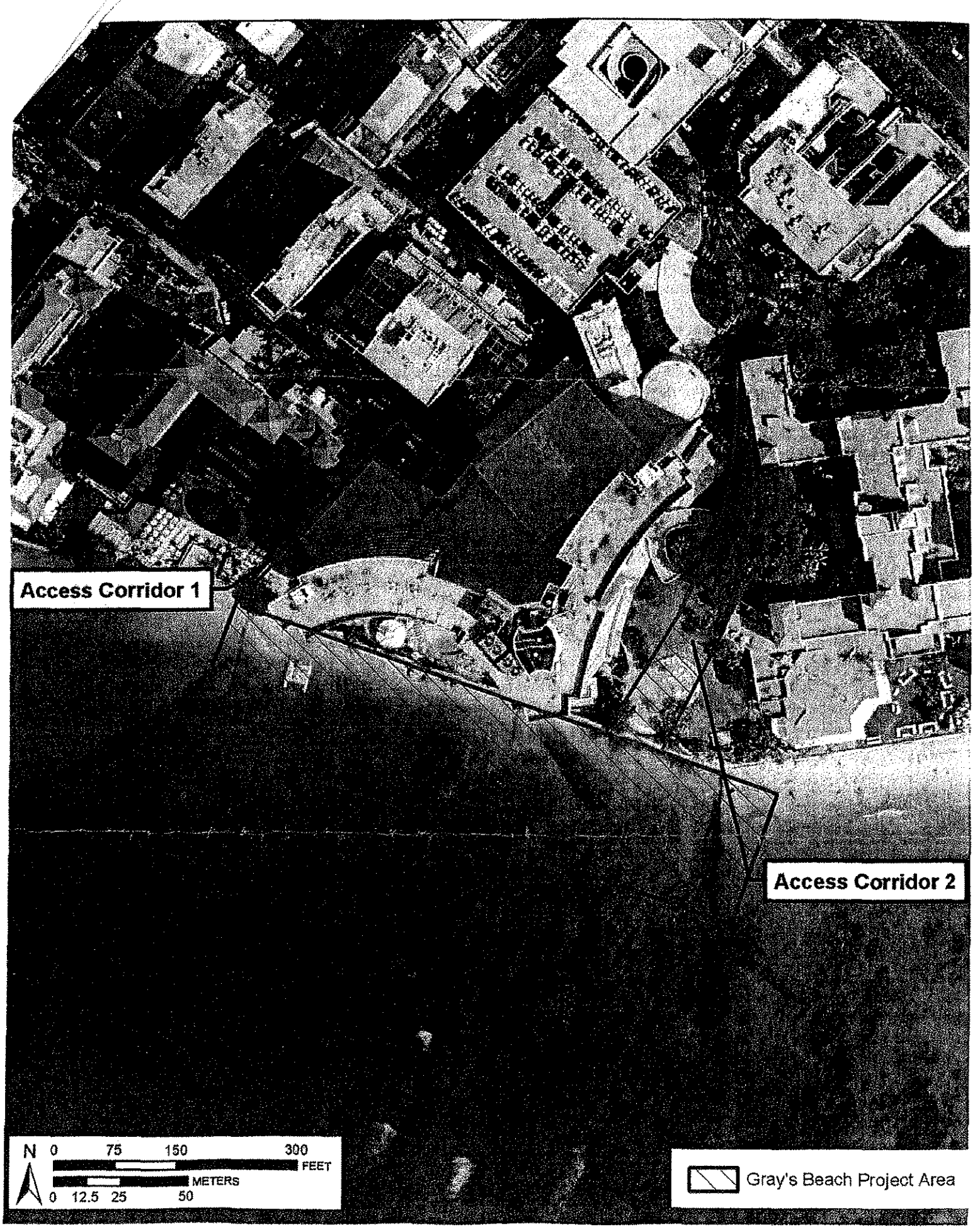
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Gray's Beach Project Area