

From: [nichole kanda](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Patrick K. Wong](#)
Subject: [EXTERNAL] Request to provide live/video testimony regarding item I-1 State Historic Preservation Division
Date: Wednesday, August 11, 2021 6:22:45 PM

My name is Honoraë Kanda Mata

Nichole is my mom. She has done her best to always do right for all of us. She asked all of the family to help her walk the entire 22 acres to find sites that were in a report from a company she hired and we needed to mark them and make sure that they didn't get damaged in anyway so we marked them with flags and orange fence all over. This took days and hours cause all we had was a book my mom made to follow and we had to group up so we could cover all areas. This is wrong and unfair we are getting punished for doing our best and trying our best we are a small local family and all we wanted was to live together and support each other.

Honoraë Kanda Mata

From: [Nichole Kanda](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Patrick K. Wong](#)
Subject: [EXTERNAL] Request to provide live/video testimony regarding item I-1 State Historic Preservation Division
Date: Wednesday, August 11, 2021 4:01:58 PM

I am the daughter in law of Nichole Kanda and I took part in the walking of the land to mark sites as the Caft Lady from GANDA said to do. We started to grid out with members of our family and walk looking on the ground and area for sites that needed to be marked from the report our mon gave us. She made copy's by pages and site number and laminated then so when it rain it would not get damaged. We did theirs for a few days to cover the 22 acres of land. My mom should not be fined anything as she has always done the best for us and all her family.

Kyonna McDonald

From: [Matt Clark](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Written testimony for agenda item I-1
Date: Thursday, August 12, 2021 9:00:42 AM

Dear members of the Board of Land and Natural Resources:

I am writing you on behalf of Nichole Kanda regarding item I-1 State Historic Preservation Division, Enforcement Action against Nichole Kanda, Cacilie Craft, and Garcia and Associates for Unpermitted Grading and Violations of Agreed-Upon Mitigation Commitments, Maka'ula Aupua'a, North Kona, Hawaii Island, Tax Map Key: (3) 7-3-002:015. I am an archaeologist and the director of ASM Affiliates (ASM), a Hilo-based cultural resource management firm. I have more than 21-years of professional archaeological experience on Hawai'i Island, I graduated from the UH Hilo Master's Program in Heritage Management in 2017, and I currently serve as a member of the County of Hawai'i's Cultural Resources Commission. In February of 2020, I was hired by Ms. Kanda to assist with the self-reporting of inadvertent impacts to historic properties that occurred on TMK: (3) 7-3-002:015 to the State Historic Preservation Division (SHPD). I also assisted Ms. Kanda with the preparation of the Update Archaeological Inventory Survey requested by SHPD in October of 2021. I have spent a considerable amount of time at the subject parcel examining and researching the impacts to historic properties that occurred there, as well as reviewing the prior archaeological surveys, reports, plans, and correspondence related to this agenda item, and the notice of the enforcement action prepared by SHPD in August of 2021. Over the last two years I have also gotten to know Ms. Kanda personally, and I have discussed extensively with her the circumstances that led to the historic properties on the subject parcel being impacted. After reviewing the facts of this agenda item, it is my professional and personal opinion that the Board should not fine Ms. Kanda, and certainly not the fine her the amount recommended by the State Historic Preservation Division Administrator Alan S. Downer.

While I do not condone the destruction of historic properties with previously agreed upon mitigation commitments in any circumstance, and I believe that enforcement actions are necessary, in this case I believe that the fines levied against Ms. Kanda are unfair and that they set a bad precedent for the future of historic preservation in Hawai'i. Ms. Kanda hired professionals in the historic preservation field, licensed by SHPD, to assist her with navigating the historic preservation review process. She made a good faith effort to comply with all applicable historic preservation rules and regulations, and did everything she was asked to do by SHPD in order to protect the historic properties located on TMK: (3) 7-3-002:015. Ms. Kanda attempted to preserve every cultural site and feature documented on her property by Garcia and Associates (GANDA), and even agreed to the mitigation measures presented in an SHPD accepted archaeological preservation plan that if implemented as intended would not allow her vehicular access to more than half of her property. She was then asked by GANDA to locate and install protective fencing around the archaeological sites by herself without guidance, and even hired an archaeological monitor from GANDA, as required in the preservation plan, to make sure that those historic properties were not damaged by land clearing activities. The archaeological monitor watched while all of the cultural features presented in the enforcement action prepared by SHPD were destroyed.

Upon learning that many of the preservation features on her property were impacted by the land clearing activities, Ms. Kanda hired ASM to assist in self reporting those impacts to SHPD as required

by the preservation plan. That self-reporting led to SHPD levying the maximum possible fines against her. If those fines are enforced, I believe that the ultimate outcome will be to discourage other landowners from reporting similar inadvertent impacts in the future. I also think that SHPD has exceed the maximum possible fines allowed under the rules, by fining Ms. Kanda per feature instead of per historic property, which is defined as a "site" in the rules.

I ask that you please take a deeper look at the facts of this enforcement action before fining Ms. Kanda what has been recommended by SHPD, as she has already paid enough for following the historic preservation rules.

Thank you, Matt Clark

Photograph



Matt Clark

Senior Archaeologist

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www.asmaffiliates.com

From: [Nichole Kanda](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Patrick K. Wong](#)
Subject: [EXTERNAL]] Request to provide live/video testimony regarding item I-1 State Historic Preservation Division
Date: Thursday, August 12, 2021 7:30:38 AM

My name is Nolan Kanda my mom is Nichole I feel this is not right my mom worked hard went threw all the agencies to get direction and professional help and guidance. She did what she was told to do and had everyone help that she could find. She was given a report threw a email and told to go find the sites. Now everyone wants to bash her for trying her best and fine her. She paid professionals for help and this is what happened to her. On top of that my mom is carrying for my grate grandma 98 and our aubty 91 years old had to live with out water and road let alone for years asking to be heard and to settle things. My mom has narrowed money to stay afloat all of us kids have taken loans to help her and all she wanted to do was give us a better life as my mom is all we have . I hope that you all will see mom my is our rock and a good person who always does what's right and helps so many . She shouldn't be punished for trying her best .

Nolan Kanda

From: [nichole Kanda](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] EXTERNAL] Request to provide live/video testimony regarding item I-1 State Historic Preservation Division
Date: Wednesday, August 11, 2021 4:01:55 PM

My is Tyson Mata my mom is Nichole Kanda i am agenst the item I1 and any fines agenst my mom. She asked out help after being told we need to find sites that were email to us by the company she hired. So we got 12 of our family members to walk the land from top to bottom as instructed to follow the email book of sites and find them and mark them out. My mom did the best she could with what we were given.

Nichole Kanda
808-443-4811

From: [Cacilie Craft](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Carole Garcia](#)
Subject: [EXTERNAL] BLNR written testimony regarding agenda item I
Date: Wednesday, August 11, 2021 7:27:10 PM
Attachments: [GANDA - Exhibit B.pdf](#)
[GANDA - Exhibit C.pdf](#)
[GANDA - Exhibit D.pdf](#)
[GANDA Written Testimony regarding SHPD Enforcement Action.pdf](#)
[GANDA - Exhibit A.pdf](#)

To the Board of Land and Natural Resources,

On behalf of Garcia and Associates, we hereby submit the attached written testimony (with exhibits) regarding agenda item I.

1. STATE HISTORIC PRESERVATION DIVISION

1. Enforcement Action against Nichole Kanda, Cacilie Craft, and Garcia and Associates for Unpermitted Grading and Violations of Agreed-Upon Mitigation Commitments, Maka'ula Ahupua'a, North Kona, Hawai'i Island, Tax Map Key: (3) 7-3-002:015

Should you have any questions, please feel free to contact me.

My contact info is:

Cacilie Craft, MA, RPA
(808) 476-5176
ccraft@garciaandassociates.com

Mahalo,

Cacilie Craft, MA, RPA
Pacific Program Manager, Senior Archaeologist

Garcia and Associates (GANDA)
146 Hekili Street, Suite 101
Kailua, Hawai'i 96734
Hawai'i: 808-262-1387
Guam: 671-488-2005
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GARCIA AND ASSOCIATES — PACIFIC REGION

HAWAII: 146 HEKILI STREET, SUITE 101, KAILUA, HAWAII 96734

GUAM: GARDEN VILLA H302, 800 PALE SAN VITORES ROAD, TUMON, GUAM 96913

PHONE 808.262.1387

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August 11, 2021

State Historic Preservation Division
Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawai'i
PO Box 621
Honolulu, Hawai'i 96809

Re: *Enforcement Action against Nichole Kanda, Cacilie Craft, and Garcia and Associates for Unpermitted Grading and Violations of Agreed-Upon Mitigation Commitments*
Maka'ula Ahupua'a, North Kona, Hawai'i Island, TMK: (3) 7-3-002:015
Written Testimony for August 13, 2021 Meeting

To the State Historic Preservation Division and Board of Land and Natural Resources:

We write to provide you with written testimony in advance of the August 13, 2021 Meeting of the Board of Land and Natural Resources.

I. Introduction

Cacilie Craft and Garcia and Associates ("GANDA") are being assessed fines of \$332,000 for actions that are beyond the scope of any agreement they had with the landowner, Ms. Nicole Kanda. Ms. Craft and GANDA were retained to prepare an Archaeological Inventory Survey and Preservation Plan for Ms. Kanda's property (parcel TMK (3) 7-3-002:015, North Kona, Hawai'i Island). Neither Ms. Craft nor GANDA were retained (nor were they paid) to provide any other services, including archaeological monitoring. As such, Ms. Craft and GANDA are not responsible for any of the violations and resulting fines assessed by the State of Historic Preservation Division ("SHPD").

II. Background Facts

A. GANDA and Ms. Craft

Founded in 1994, GANDA is an environmental consulting firm specializing in cultural resource management, archaeological and ethnographic research, aquatic and terrestrial ecology, and natural resources policy and planning applications. Cacilie Craft has 15 years of professional archaeological and historic preservation experience, and has been with Garcia and Associates for the last 11 years. She has managed and conducted over 150 projects throughout the Pacific Region, including Hawai'i, Guam, the Northern Mariana Islands, the Republic of Palau, and Yap of the Federated States of Micronesia. She has extensive experience with federal, state, and territorial consultation and

compliance, including Section 106; all aspects of archaeological field investigation and data analysis; architectural history survey and evaluation; preservation planning and management; and public outreach and community engagement in heritage preservation.

As Principal Investigator, Ms. Craft conducted numerous archaeological surveys, data recovery, construction monitoring, architectural history assessment, and historic preservation management projects across the Pacific Region. In her role as Program Manager, Ms. Craft oversees simultaneous federal and private sector projects and runs all aspects of project planning, including negotiation between government and private sector clients and regulatory agencies, and the routine preparation of budgets, work plans, and technical studies for compliance with federal and territorial laws. She also performs or directs archival research and literature reviews; historic context reviews; temporary curation and laboratory analysis of archaeological materials; GPS/GIS collection and analysis; interpretation of archaeological sites dating from the early pre-Contact to late historic periods; and recordation and evaluation of buildings and structures for National Register of Historic Places eligibility determinations.

B. The Contracts

On February 6, 2018, GANDA and Ms. Kanda entered into an agreement whereby GANDA would prepare an archaeological inventory survey (“AIS”) of TMK (3) 7-3-002:015, North Kona, Hawai‘i Island (the “Property”). A true and correct copy of the Agreement is attached hereto as **Exhibit “A.”** The scope of the work was as follows:

Task	Description	Cost Type*	Units	Total
1. Field Survey	1. Two days of fieldwork on the parcel.	Lump Sum	1	\$ 4,719
2. Draft and Final AIS Report	1. Write and submit draft and final AIS to SHPD, acquire concurrence letter	Lump Sum	1	\$ 4,899 \$ 4,974
			TOTAL	\$ 9,693

Based on the two days of field survey, GANDA learned that the parcel contained a significant number of historical features associated with both historic and traditional Hawaiian occupation. Thereafter, GANDA and Ms. Kanda entered into AMENDMENT-1. A true and correct copy of AMENDMENT-1 is attached hereto as **Exhibit “B.”** AMENDMENT-1 included the following scope of work:

Task	Description	Cost Type*	Units	Total
1. Field Survey	Two days of fieldwork on the parcel.	Lump Sum	1	\$ 4,719
2. Draft and Final AIS Report	Write and submit draft and final AIS to SHPD, acquire concurrence letter	Lump Sum	1	\$ 4,974
3. Additional Field Survey	Two (2) additional days of fieldwork.	Lump Sum	1	\$ 4,193
4. Additional Report Effort.	Additional effort for site map drafting and site documentation and assessment in AIS report.	Lump Sum	1	\$ 1,909
		Revised TOTAL*		\$ 15,795

Finally, on July 12, 2018, GANDA and Ms. Kanda entered into AMENDMENT-2 whereby GANDA would prepare a Preservation Plan for \$1,865.00. A true and correct copy of AMENDMENT-2 is attached hereto as **Exhibit “C.”**

On August 27, 2018, GANDA prepared its FINAL - Archaeological Inventory Survey of TMK (3) 7-3-002:015, Maka‘ula Ahupua‘a, North Kona District, Hawai‘i Island. Shortly thereafter, on August 31, 2018, GANDA prepared its FINAL – Archaeological Site Preservation Plan for Sites 50-10-28-30876 through 50-10-28-30888, Maka‘ula Ahupua‘a, North Kona District, Hawai‘i Island.

GANDA’s work ended in August 2018 with SHPD’s acceptance of the AIS and Preservation Plan. Upon completion of GANDA’s contract deliverables, Ms. Craft discussed with Ms. Kanda her obligations as Landowner, which included, but was not limited to, the conditions of Ms. Kanda’s grubbing permit and the obligations under the accepted Preservation Plan. This included an obligation on Ms. Kanda’s part to erect physical buffers according to the Preservation Plan. Additionally, Ms. Kanda was obligated to contact SHPD should there be any changes to the Preservation Plan or protection measures. Based on this, Ms. Craft’s obligations as a principal investigator ended in August 2018.

C. No Agreement for Permitting or Archaeological Monitoring

While GANDA prepared an AIS and a Preservation Plan, GANDA was not involved in the preparation or submission of any permits. Further, GANDA was not retained to provide archaeological monitoring.

On or about August 30, 2018, Ms. Kanda asked Ms. Craft if GANDA could provide archaeological monitoring of the grubbing permit work.¹ GANDA did not have any employees available to provide monitoring. Ms. Kanda later told Ms. Craft that she knew someone locally that could provide archaeological monitoring and suggested using Ms. Leina‘ala Benson, a former employee of GANDA.² Both Ms. Kanda and Ms. Benson were advised that only minimal grubbing was to be conducted using hand tools and chainsaws, and no work was to be done in the vicinity of archaeological sites. Based on the limited nature of the grubbing work, Ms. Craft asked Susan Lebo, Archaeology Branch Chief of the SHPD whether a Monitoring Plan would be required. Dr. Lebo advised that a simple letter would be sufficient.

Ms. Craft volunteered to oversee Ms. Benson’s monitoring but with the express understanding that specific conditions be adhered to, including, but not limited to, Ms. Kanda ensuring that the Preservation Plan would be upheld and that Ms. Benson would submit proper documentation that the Plan was upheld. Ms. Craft further required that she receive photos and daily field notes of the monitoring, which is consistent with industry best practice.

On March 26, 2019, Ms. Kanda sent Ms. Craft a completion of monitoring letter that she said was written by Ms. Benson. The letter stated:

This letter documents the completion of the Archaeological monitoring at 73-4103 Hawaii Belt Road TMK# (3)7-3-002:015. Archaeological monitoring was conducted on this twenty-two-acre parcel between February 11, 2019 through March 19, 2019 by Archaeologist Leina‘ala Benson of Garcia and Associates.

All grubbing is now complete. The work was done in compliance with the Preservation Plan and no portion of the archaeological sites were disturbed. All sites are currently intact, and the property owners will maintain and preserve all archaeological sites on the property, as agreed to in the Preservation Plan.

A true and correct copy of the letter received from Ms. Craft is attached hereto as **Exhibit “D.”**

GANDA’s voluntary oversight of the project ended on March 19, 2019, when Ms. Benson completed her monitoring work. GANDA strongly maintains that on this date, the project activities were still in compliance with the Preservation Plan and all historic sites remained intact.

¹ GANDA was not involved in the preparation or submission of any grubbing (or grading) permits.

² Ms. Benson’s last date of employment with GANDA was April 11, 2016.

Although there are incorrect statements in the letter (that Ms. Benson worked for Garcia and Associates), Ms. Craft was assured by Ms. Benson that the work was done in compliance with the Preservation Plan. Although the letter was unsigned, Ms. Benson has since confirmed that while she was providing archaeological monitoring, the work was done in compliance with the Preservation Plan and that no portion of the archaeological sites were disturbed.³

As a courtesy to Ms. Kanda, Ms. Craft agreed to provide a copy of the letter to SHPD. In her email to SHPD, Ms. Craft stated:

Attaching letter documenting monitoring during grubbing on Ms. Kanda's parcel per the Preservation Plan. We did ask SHPD if a Monitoring Plan or AMR would be required but were told a simple letter would suffice since only minimal grubbing—using hand tools and a chainsaw—was to be conducted, and not in the vicinity of archaeological sites. So yes, normally we would expect a Monitoring Plan but this seemed to be a special case so we followed SHPD's lead. Ms. Kanda also seemed quite genuine about avoiding and protecting archaeological sites and we were very keen on working with her on the language and specific requirements of the Preservation Plan to be sure she both understood and was able to commit to upholding them. And again, work was only to include hand tools and a chainsaw to thin vegetation.

To our knowledge, she upheld the Preservation Plan and all requirements from SHPD during our involvement in the project. What she has done since, however, is beyond our ability to know as the consultant. I do believe she was genuine about avoiding and preserving sites, so it is my hope that all archaeological sites are intact.

From the tenor of the email it is clear that Ms. Craft is simply reporting what Ms. Benson observed and that GANDA had limited knowledge of what Ms. Kanda was doing beyond what was reported in the letter. As stated previously, archaeological monitoring was not part of GANDA's scope of work and GANDA was not paid to do any work beyond the preparation of the AIS and Preservation Plan.

³ Ms. Craft was not provided with any photos or documentation.

III. Discussion

A. Analysis by SHPD

SHPD alleges the following:

- Alteration of and damage to wall segment;
- Destruction of two cobble piles (Features 1 and 2);
- Destruction of a complex (Site 30882);
- Destruction of a large cobble-walled enclosure;
- Destruction of two well-constructed cobble cairns (Features 1 and 2);
- Destruction of a complex (Site 30886);

Ms. Craft and GANDA are not responsible nor liable for any of these alleged violations. As stated above, GANDA was retained to prepare an AIS and a Preservation Plan. GANDA was not retained to provide any other services, including archaeological monitoring, and GANDA was not the principal investigator for any of the grubbing or construction work done on the Property. As such, Ms. Craft and GANDA are not responsible for the actions of Ms. Kanda and her contractors.

B. Violations

SHPD alleges that GANDA and Ms. Craft have committed a number of violations.

1. The archaeological firm, GANDA and principal investigator Ms. Cacilie Craft were responsible for ensuring Ms. Kanda's compliance with agreed-upon mitigation commitments and permit conditions.

Ms. Craft and GANDA respectfully disagree with SHPD. Ms. Craft and GANDA are not responsible nor liable for any of these alleged violations. As stated above, GANDA was only retained to prepare an AIS and a Preservation Plan. GANDA was not retained to provide any other services, including archaeological monitoring, and GANDA was not the principal investigator for any of the grubbing or construction work done on the Property. Further, GANDA did not agree to ensure that Ms. Kanda comply with agreed-upon mitigation commitments and permit conditions. As such, Ms. Craft and GANDA are not responsible for the actions of Ms. Kanda and her contractors.

2. Both GANDA and Ms. Craft violated HRS § 6E-11(c) by failing to perform their respective duties as archaeological firm and principal investigator and failing to halt the unpermitted grubbing and grading that resulted in damage and alteration to archaeological features on the property.

Ms. Craft and GANDA respectfully disagree with SHPD. Ms. Craft and GANDA are not responsible nor liable for any of these alleged violations. As stated above, GANDA was only retained to prepare an AIS and a Preservation Plan. GANDA was not retained to provide any other services, including archaeological monitoring, and Ms. Craft was not the principal investigator for any of the grubbing or construction work done on the Property. Ms. Craft and GANDA's duties and responsibility terminated once they completed the AIS and Preservation Plan.

3. As an archaeological firm, GANDA is required to obtain an archaeological permit from the Department of Land and Natural Resources prior to performing any alteration to historic properties (HAR § 3-282-3(a)).

GANDA respectfully disagrees with SHPD. GANDA did not perform any alteration to historic properties. GANDA was not retained to alter historic properties. Finally, GANDA was not retained to provide any monitoring of any work to alter historic properties.

4. GANDA failed to fulfill the conditions of its archaeological permit by failing to ensure that it had personnel that were capable of adequately conducting the necessary work to accomplish any scopes of work. GANDA affirmed that an archaeological monitor was onsite during the construction activity and yet they failed to halt the unpermitted grubbing and grading activities that resulted in damage and alteration to archaeological features on the property. Therefore, GANDA's failure to fulfill its archaeological permit's requirement constitutes a violation of HRS § 6E-11(c).

GANDA respectfully disagrees with SHPD. GANDA did not fail to fulfill the conditions of its archaeological permit as GANDA was not retained by Ms. Kanda to perform any scope other than the preparation of an AIS and a Preservation Plan. GANDA simply forwarded a letter from Ms. Kanda's archaeological monitor but was never retained to perform any monitoring services. Further, based on the letter from the archaeological monitor, Ms. Benson, there was no damage or alteration to archaeological features while Ms. Benson was monitoring (between February 11, 2019 and March 19, 2019). Based on this, it is likely that the damage or alteration occurred after March 19, 2019 and before September 23, 2019 when ASM Affiliates conducted a field report. Neither GANDA nor Ms. Craft were responsible for any of the alleged unpermitted grubbing and grading activities that resulted in damage and alteration to archaeological features on the property.

5. GANDA is also subject to administrative penalties for its failure to fulfill a permit condition, as set forth in HAR §13-282-5.

GANDA respectfully disagrees with SHPD. SHPD alleges that GANDA is subject to administrative penalties “should a party alter an archaeological property.” GANDA did not alter any archaeological property. GANDA was not retained to alter archaeological properties. Finally, GANDA was not retained to provide any monitoring of any work to alter archaeological properties.

6. The principal investigator is directly responsible and accountable for assuring the quality of each aspect of a historic preservation project. As the principal investigator in the instant case, Ms. Craft failed to assure the quality of all aspects of historic preservation by not ensuring that Ms. Kanda’s land altering activities were in compliance with the agreed-upon mitigation commitments and did not result in destruction or alteration to historic properties. Therefore, Ms. Craft’s failed duty as a principal investigator constitutes a violation of HRS §6E-11 (c).

GANDA respectfully disagrees with SHPD. As stated above, Ms. Craft and GANDA’s only contractual scope of work was to provide an AIS and a Preservation Plan. Once the Preservation Plan was complete, Ms. Craft’s responsibilities as a principal investigator were complete and she was no longer the principal investigator for the Project. The mere preparation of a Preservation Plan does not obligate a principal investigator to provide any other services without a contract.

7. Should a party alter an archaeological property without a permit or should not fulfill a permit’s conditions, the principal investigator of the archaeological firm or the firm, or both shall be subject to penalties as covered under section 6E-11, HRS (HAR § 13-282-5(1)).

GANDA respectfully disagrees with SHPD. As stated above, Ms. Craft and GANDA’s only contractual scope of work was to provide an AIS and a Preservation Plan. Neither Ms. Craft nor GANDA was involved in any of the permits obtained by Ms. Kanda. Once the Preservation Plan was complete, Ms. Craft’s responsibilities as a principal investigator were complete and she was no longer the principal investigator for the Project. The mere preparation of a Preservation Plan does not obligate a principal investigator to provide any other services without a contract.

8. In addition to HRS §6E-11 (c) civil and administrative penalties, Ms. Craft is also subject to administrative penalties for GANDA’s failure to fulfill a permit condition, as set forth in HAR §13-282-5.

GANDA respectfully disagrees with SHPD. As stated above, Ms. Craft and GANDA's only contractual scope of work was to provide an AIS and a Preservation Plan. Once the Preservation Plan was complete, Ms. Craft's responsibilities as a principal investigator were complete and she was no longer the principal investigator for the Project. The mere preparation of a Preservation Plan does not obligate a principal investigator to provide any other services without a contract.

9. An archaeological firm must obtain an annual permit from the department prior to performing any alteration to historic properties in the State of Hawai'i. As a requirement of the permit, the permittee must ensure that all personnel are capable of adequately conducting the necessary work to accomplish the scopes of work for the project. In this case, GANDA as the permittee was responsible for ensuring that work was being done properly, which included compliance with the agreed-upon mitigation commitments. GANDA had a duty to ensure that Ms. Kanda's land altering activities were compliant, and that Ms. Craft was effective in her role as principal investigator. GANDA's failure to halt Ms. Kanda's mechanical land altering activities and ensure Ms. Craft's capability as a principal investigator constitute a clear HRS §6E-11 (c) violation.

GANDA respectfully disagrees with SHPD. As stated above, Ms. Craft and GANDA's only contractual scope of work was to provide an AIS and a Preservation Plan. Once the Preservation Plan was complete, Ms. Craft's responsibilities as a principal investigator were complete and she was no longer the principal investigator for the Project. The mere preparation of a Preservation Plan does not obligate a principal investigator to provide any other services without a contract.

10. HAR §13-281-2 defines a principal investigator as the "individual directly responsible and accountable for assuring the quality of all aspects of an historic preservation project, and the accuracy and completeness of its written documentation." As the principal investigator, Ms. Craft is responsible for project planning, oversight, and reporting. Accordingly, Ms. Craft has a duty to assure that Ms. Kanda's land altering activities were compliant with the agreed-upon mitigation commitments. A principal investigator must possess a "demonstrated knowledge of historic preservation laws, rules, and guidelines" pursuant to HAR §13-281-3(6). Ms. Craft's failure to halt Ms. Kanda's unpermitted mechanical grubbing activities resulting in alteration and destruction to historic properties is a failure of her duty as a principal investigator and demonstrates a lack of knowledge of historic preservation laws, rules, and guidelines. Any failure of the principal investigator rests on both the principal investigator and the permittee whose archaeological permit the principal investigator works under. In this case, Ms. Craft's failure to perform her duties as a principal

investigator is reflected as HRS §6E-11 (c) violations for both herself and GANDA as the permittee.

GANDA respectfully disagrees with SHPD. As stated above, Ms. Craft and GANDA's only contractual scope of work was to provide an AIS and a Preservation Plan. Once the Preservation Plan was complete, Ms. Craft's responsibilities as a principal investigator were complete and she was no longer the principal investigator for the Project. Neither Ms. Craft nor GANDA were retained to provide any project planning, oversight or reporting. The mere preparation of a Preservation Plan does not obligate a principal investigator to provide any other services without a contract.

11. Ms. Kanda relied on GANDA to advise her on permitted land clearing activities pursuant to the SHPD's review of the proposed project. GANDA should have ensured that the required monitoring was carried out in accordance with the SHPD-approved monitoring plan.

GANDA respectfully disagrees with SHPD. As stated above, Ms. Craft and GANDA's only contractual scope of work was to provide an AIS and a Preservation Plan. GANDA properly advised Ms. Kanda on any activities on the project when GANDA provided her with the AIS and the Preservation Plan. Ms. Craft and GANDA further advised Ms. Kanda, as the landowner, of her responsibilities for adhering to the Preservation Plan and of her obligation to contact SHPD should there be any changes to the Plan. The mere preparation of the Preservation Plan, however, does not obligate GANDA to provide any other services without a contract. Once the Preservation Plan was complete and accepted by SHPD, GANDA's responsibilities were complete.

12. Ms. Kanda believed that her land altering activities, carried out while GANDA monitored the work, were in accordance with agreed-upon measures. GANDA nor its principal investigator failed to halt the work when it became clear that it was not being conducted in accordance with the measures agreed upon to protect the significant historic properties. Since Ms. Kanda could reasonably expect the archaeological consultant would ensure that all work was in compliance with the agreed upon conditions, the SHPD is recommending that Ms. Kanda be accountable for only 20% of the total damages.

As a principal investigator, Ms. Craft is mandated by HRS § 13-281-2 [sic] to directly oversee and ensure the quality of work being performed in a historic preservation project. Accordingly, Ms. Craft is accountable for the project monitor's failure to ensure that work was carried out in accordance with the agreed-upon protective measures and failure to halt Ms. Kanda's unpermitted activities. GANDA, as the permittee, is responsible for ensuring the quality of work on a historic preservation

project being conducted under its permit, including the work of its principal investigator. GANDA's failure as the permittee and Ms. Craft's failure of duty as the principal investigator directly contributed to the alteration or destruction of forty (40) individual historic features. Accordingly, GANDA and Ms. Craft are equally responsible for paying the remaining 80% of the total fines.

GANDA respectfully disagrees with SHPD. There are numerous factual inaccuracies with SHPD's position. As stated above, GANDA was not monitoring the work. GANDA was not retained to perform archaeological monitoring. GANDA was not in a position to halt any work as GANDA was not retained to perform archaeological monitoring. It is unreasonable for Ms. Kanda to expect either GANDA or Ms. Craft to ensure any work was in compliance as Ms. Kanda was fully aware that she had not retained GANDA to monitor the work.

HAR § 12-281-2 provides,

“Principal investigator” means the individual directly responsible and accountable for assuring the quality of all aspects of an historic preservation project, and the accuracy and completeness of its written documentation.

As stated above, Neither Ms. Craft nor GANDA were retained to provide any project planning, oversight or reporting. They were not retained to provide any archaeological monitoring. The mere preparation of a Preservation Plan does not obligate a principal investigator to provide any other services without a contract. Once the Preservation Plan was complete, Ms. Craft's responsibilities as a principal investigator were complete and she was no longer the principal investigator for the Project.

IV. Conclusion

The alleged violations and assessment of fines are all based on the mistaken fact that Ms. Craft and GANDA were retained to provide archaeological monitoring for the Property. This is simply not the case. Ms. Craft and GANDA were retained to provide an Archaeological Inventory Survey and a Preservation Plan. They were not retained to assist with permits or to provide any archaeological monitoring for the Property. Since they were not retained in any capacity beyond preparing the AIS and the Preservation Plan, they cannot be held responsible for any of the actions of Ms. Kanda. Based on the foregoing, neither Ms. Craft nor GANDA are liable for any of the violations alleged by SHPD.

Furthermore, based on Ms. Benson's letter and confirmation that no portion of the archaeological sites were disturbed and that as of the time she completed her monitoring, all sites were intact, the destruction to the sites must have occurred in the six month period after Ms. Benson completed her limited monitoring under the direct hire of Ms. Kanda. The reports of the violations were made not in March 2019, but in September 2019, at which time Ms. Kanda, through her attorneys, self-reported the damage. We respectfully suggest that Ms. Kanda should be responsible for 100% of the violations and fines.

Respectfully submitted,



Carole Garcia, MA
VP/Operations

Enclosures (Exhibits A – D)

**GARCIA AND ASSOCIATES — PACIFIC REGION**

HAWAII: 146 HEKILI STREET, SUITE 101, KAILUA, HAWAII 96734

GUAM: GARDEN VILLA H302, 800 PALE SAN VITORES ROAD, TUMON, GUAM 96913

PHONE 808.262.1387

PHONE 671.488.2005

FAX 808.262.1384

FAX 671.647.0870

6 February 2018

Nicole Kanda
74-567 Honokohau St.
Kailua Kona, HI 96740
808-443-4811
vipdelivery.hi@gmail.com

RE: Price Proposal for Archaeological Inventory Survey of TMK (3) 7-3-002:015, North Kona, Hawaii Island.

Aloha Ms. Kanda,

This letter presents a price proposal for completing an archaeological inventory survey (AIS) of parcel TMK (3) 7-3-002:015 in North Kona, Hawaii Island. The AIS will include two days of archaeological field survey on the 22-acre parcel. Following this, the results of the survey will be written up in a Draft Archaeological Inventory Survey report. The report will be submitted to you for review, after which it will be submitted to the State Historic Preservation Division (SHPD). The SHPD will comment on the report, and issue either a concurrence letter, request a Preservation Plan, or request changes. Garcia and Associates will address any minor comments and then produce and submit a Final report. If a Preservation Plan is required, we will submit a proposal for additional funding to complete that task.

At the present time, it is assumed that the parcel contains minimal cultural resources (there is only one known historic resource on the parcel, an old stone ranch wall along the southern boundary). This is a central assumption of the current pricing. If abundant resources are present, additional effort may be necessary. If this appears to be the case, we will halt work and inform you of the observed density of cultural features and estimated additional costs.

The fieldwork will take two days to complete, and the Draft report will take an additional three weeks. We are available to begin work immediately upon execution of a contract. The fixed fee cost for the work, inclusive of Hawaii GET and \$450 SHPD report submittal fee, is presented in the table below.

Task	Description	Cost Type*	Units	Total
1. Field Survey	1. Two days of fieldwork on the parcel.	Lump Sum	1	\$ 4,719
2. Draft and Final AIS Report	1. Write and submit draft and final AIS to SHPD, acquire concurrence letter	Lump Sum	1	\$ 4,899
				\$ 4,974
			TOTAL	\$ 9,693



GARCIA AND ASSOCIATES — PACIFIC REGION

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If the terms and cost of this scope of services are acceptable, please sign and date on the lines provided below to execute the contract. This will constitute our 'notice to proceed' with the project. By signing, you are also agreeing to our terms of payment (payment in full within 30 days of invoice receipt).

Signature

Title

Name (Print)

Date

Thank you for the opportunity to present this proposal. We look forward to the prospect of working with on this and future projects. Please contact me at 262-1387 or mdesilets@garciaandassociates.com if you have any questions.

Sincerely,

Michael Desilets, MA, RPA
Pacific Regional Manager
Garcia and Associates (GANDA)

**GARCIA AND ASSOCIATES — PACIFIC REGION**

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7 March 2018

Nicole Kanda
74-567 Honokohau St.
Kailua Kona, HI 96740
808-443-4811
vipdelivery.hi@gmail.com

RE: AMENDMENT-1, Price Proposal for Archaeological Inventory Survey of TMK (3) 7-3-002:015,
North Kona, Hawaii Island.

Aloha Ms. Kanda,

This letter presents an amended price proposal for completing an archaeological inventory survey (AIS) of parcel TMK (3) 7-3-002:015 in North Kona, Hawaii Island. Based on the two days of field survey conducted in mid-February, the parcel is now known to contain a significant number of historical features associated with both historic and traditional Hawaiian occupation. SHPD regulations for Archaeological Inventory Survey reports require full documentation of these features, to include plan maps, photographs, measurements, and narrative descriptions. The majority of the large mound complex in the *mauka* part of the parcel has been recorded, with only a small amount remaining. Other remaining work includes two burial platforms at the *makai* end of the parcel, a small mound complex (4 mounds), additional unrecorded wall segments in the central, lower, and northern part of the parcel, a corral feature, and a few other isolated mounds.

The remaining documentation work will require two (2) additional days of fieldwork. We are committed to completing the field recordation in this timeframe. Additional effort is also required to write up site descriptions, draft plan maps of the features, and submit site number requests to SHPD for each of the sites. All sites also need to be assessed for significance and integrity. Pricing for additional effort is as follows:

Task	Description	Cost Type*	Units	Total
1. Field Survey	Two days of fieldwork on the parcel.	Lump Sum	1	\$ 4,719
2. Draft and Final AIS Report	Write and submit draft and final AIS to SHPD, acquire concurrence letter	Lump Sum	1	\$ 4,974
3. Additional Field Survey	Two (2) additional days of fieldwork.	Lump Sum	1	\$ 4,193
4. Additional Report Effort.	Additional effort for site map drafting and site documentation and assessment in AIS report.	Lump Sum	1	\$ 1,909
		Revised TOTAL*		\$ 15,795



GARCIA AND ASSOCIATES — PACIFIC REGION

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GUAM: GARDEN VILLA H302, 800 PALE SAN VITORES ROAD, TUMON, GUAM 96913

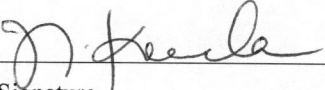
PHONE 808.262.1387

PHONE 671.488.2005

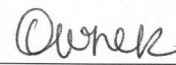
FAX 808.262.1384

FAX 671.647.0870


If the terms and cost of this amended scope of services are acceptable, please sign and date on the lines provided below to execute the contract. This will constitute our 'notice to proceed' with the additional project effort. By signing, you are also agreeing to our terms of payment (payment in full within 30 days of invoice receipt).



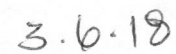
Signature



Title



Name (Print)



Date

Thank you for the opportunity to present this proposal. We look forward to the prospect of working with on this and future projects. Please contact me at 262-1387 or mdesilets@garciaandassociates.com if you have any questions.

Sincerely,



Michael Desilets, MA, RPA
Pacific Regional Manager
Garcia and Associates (GANDA)



GARCIA AND ASSOCIATES — PACIFIC REGION

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July 12, 2018

Nichole Kanda
74-567 Honokohau St.
Kailua Kona, HI 96740
808-443-4811
vipdelivery.hi@gmail.com

RE: AMENDMENT-2, Cost Proposal for Preparation of Preservation Plan for TMK (3) 7-3-002:015, North Kona, Hawaii Island.

Aloha Ms. Kanda,

In order to complete the archaeological inventory survey (AIS) requirements for parcel TMK (3) 7-3-002:015 in North Kona, Hawaii Island, the State Historic Preservation Division (SHPD) and the Office of Hawaiian Affairs (OHA) require submission of a Preservation Plan. The Preservation Plan will describe the agreed-upon mitigation measure of preservation-in-place for all sites recorded during the AIS and will detail specific preservation measures (both short-term and long-term) that will be enacted on the property. We can prepare and submit this document to SHPD on your behalf for **\$1,865**.

If the terms and cost of this amended scope of services are acceptable, please sign and date on the lines provided below to execute the contract. This will constitute our 'notice to proceed' with the additional project effort. By signing, you are also agreeing to our terms of payment (payment in full within 30 days of invoice receipt).

<u>Nichole Kanda</u>	<u>Owner</u>
Name (Print)	Title
<u>N. Kanda</u>	<u>7/12/18</u>
Signature	Date

Please do not hesitate to contact me if you have any questions on this cost proposal or the requirements stipulated by SHPD or OHA.

Sincerely,

Cacilie Craft, MA, RPA
Pacific Regional Manager
Garcia and Associates (GANDA)

Nichole Kanda

Property Location 73-4103 Hawaiian Belt Road

TMK# (3)7-3-002:015

Re: Archaeological Monitoring for 73-4103 Hawaii Belt Road

Aloha,

This letter documents the completion of the Archaeological monitoring at 73-4103 Hawaii Belt Road TMK# (3)7-3-002:015. Archaeological monitoring was conducted on this twenty-two-acre parcel between February 11, 2019 through March 19, 2019, by Archaeologist Leina'ala Benson of Garcia and Associates.

All grubbing is now complete. The work was done in compliance with the Preservation Plan and no portion of the archaeological sites were disturbed. All sites are currently intact, and the property owners will maintain and preserve all archaeological sites on the property, as agreed to in the Preservation Plan.

Sincerely,

Leina'ala Benson

From: [Cacilie Craft](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [Carole Garcia](#)
Subject: [EXTERNAL] BLNR written testimony regarding agenda item I
Date: Wednesday, August 11, 2021 7:27:10 PM
Attachments: [GANDA - Exhibit B.pdf](#)
[GANDA - Exhibit C.pdf](#)
[GANDA - Exhibit D.pdf](#)
[GANDA Written Testimony regarding SHPD Enforcement Action.pdf](#)
[GANDA - Exhibit A.pdf](#)

To the Board of Land and Natural Resources,

On behalf of Garcia and Associates, we hereby submit the attached written testimony (with exhibits) regarding agenda item I.

1. STATE HISTORIC PRESERVATION DIVISION

1. Enforcement Action against Nichole Kanda, Cacilie Craft, and Garcia and Associates for Unpermitted Grading and Violations of Agreed-Upon Mitigation Commitments, Maka'ula Ahupua'a, North Kona, Hawai'i Island, Tax Map Key: (3) 7-3-002:015

Should you have any questions, please feel free to contact me.

My contact info is:

Cacilie Craft, MA, RPA
(808) 476-5176
ccraft@garciaandassociates.com

Mahalo,

Cacilie Craft, MA, RPA
Pacific Program Manager, Senior Archaeologist

Garcia and Associates (GANDA)
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