

# Monterey Peninsula Community College District

## Governing Board Agenda

May 12, 2011

Human Resources

College Area

New Business Agenda Item No. A

### Proposal:

That the Board approve the resolution not to reemploy certain faculty employees for the 2011-2012 year.

### Background:

To maintain flexibility in responding to state economic conditions, on March 8, 2011 the Board approved a resolution to decrease the number of academic employees due to a reduction in particular kinds of services. This resolution identified twelve areas of reduction. The affected employees were provided timely notices and given the opportunity to request a hearing. The required hearing was held on April 28, 2011 and the Administrative Law Judge issued a decision on May 3, 2011. This decision must be considered by the Board in making the final determination to layoff academic employees. Three employees on the original notification list are not included for final notice. Two submitted letters of retirement. A previous court case determined that in this instance bumping did not apply to the categorically funded employee on the initial list.


In order to effect the layoff, final notice must be given to employees before May 15. Because the final budget picture for Monterey Peninsula College is still not known, it is necessary to issue these final notices to continue to preserve the District's ability to respond to changing budget conditions. Therefore, it is recommended that the Board consider the decision of the Administrative Law Judge, adopt the resolution not to reemploy the named faculty employees, and authorize the Superintendent/President to notify those employees by the May 15 deadline that their services will not be needed in 2011-2012.

### Budgetary Implications:

Projected budget savings of up to \$1,048,000.

- RESOLUTION:** BE IT RESOLVED, that the Governing Board adopt the following resolution not to re-employ certain faculty employees for the 2011/2012 year and authorize the issuance of final notices to these employees.

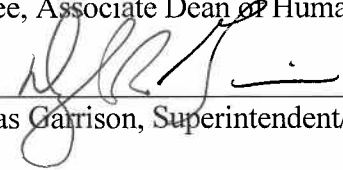
Recommended By:

  
\_\_\_\_\_  
Dr. Douglas Garrison, Superintendent/President

Prepared By:

  
\_\_\_\_\_  
Barbara Lee, Associate Dean of Human Resources

Agenda Approval:

  
\_\_\_\_\_  
Dr. Douglas Garrison, Superintendent/President

# **MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT**

## **RESOLUTION AND DECISION NOT TO REEMPLOY FACULTY EMPLOYEES FOR THE 2011-2012 SCHOOL YEAR**

RESOLUTION NO. 2010-2011/120

WHEREAS, the Board of Trustees of the Monterey Peninsula Community College District adopted a Resolution No. 2010-2011/96 on March 8, 2011, authorizing and directing the Superintendent/President to initiate and pursue procedures necessary to not reemploy the equivalent of 12.0 full time equivalent faculty employees of this District pursuant to Education Code sections 87740 and 87743 because of a reduction and/or elimination of particular kinds of services; and,

WHEREAS, the Superintendent/President, duly and properly served notice on the faculty employees listed on Attachment "A" on March 11, 2011, indicating that the Board did not intend to reemploy them to the extent indicated in the Resolution and Notice for the 2011-2012 academic year; and,

WHEREAS, the faculty employees listed on Attachment "A" were informed of their right to request a hearing and that failure to do so in writing would constitute a waiver of the right to a hearing; and,

WHEREAS, a layoff hearing was convened on April 28, 2011, by the Office of Administrative Hearings, State of California, for those certificated employees who desired a hearing; and,

WHEREAS, a Proposed Decision dated May 3, 2011, has been submitted by Nancy Rasmussen, Administrative Law Judge, Office of Administrative Hearings, in the matter of Accusations against those employees who appeared for the hearing, a true and correct copy of which is marked "Attachment B", attached hereto and by this reference made a part hereof; and,

WHEREAS, the Board has duly considered said Proposed Decision;

THE BOARD HEREBY FINDS sufficient cause for not reemploying the certificated employees listed on Attachment "C" to the extent indicated in Resolution No. 2010-2011/96 and consistent with the Proposed Decision which is hereby adopted as the decision of this Board, and finds that the decision to not reemploy these employees relates to the welfare of the Monterey Peninsula Community College District and the students thereof; and

BE IT FURTHER RESOLVED that the Board shall reduce particular kinds of services to the extent indicated in Resolution No. 2010-2011/96 and said decision shall be effective immediately;

FURTHERMORE, considering the faculty staffing requirements of the Monterey Peninsula Community College District for the 2011-12 academic year, as well as the seniority and qualifications of each of the faculty employees of the District, it is necessary that the services of the faculty employees listed on Attachment "C" will not be required for the ensuing academic year; and,

BE IT FURTHER RESOLVED AND ORDERED that the Superintendent/President is authorized and directed to notify those certificated employees listed on Attachment "C", pursuant to Education Code section 87740 that their services will not be required by this District for the ensuing 2011-12 academic year. Said notice shall be given by serving upon the faculty employees listed on Attachment "C" a true copy of this Resolution and Decision Not to Reemploy Certificated Employees.

PASSED AND ADOPTED by the Monterey Peninsula Community College District Board of Trustees on this 12th day of May, 2011, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

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Lynn Davis, Chair

ATTESTED TO:

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Douglas R. Garrison, Ed. D  
Secretary of the Board of Trustees

## ATTACHMENT A

Marilyn Townsend  
A.J. Farrar  
Daniel Phillips  
Walter White  
Cathy Haas  
Sunshine Giesler  
Nancy Predham  
Kevin Bransfield  
David Michaels  
Alethea DeSoto  
Carolyn Hansen  
Kimberly Christoff-Mansfield  
Janine Wilson

**ATTACHMENT B**

BEFORE THE GOVERNING BOARD  
MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT  
COUNTY OF MONTEREY, CALIFORNIA

In the Matter of the Accusation Against:

KEVIN BRANSFIELD, A.J. FARRAR,  
CAROLYN HANSEN, KIMBERLY  
CHRISTOFF-MANSFIELD, DAVID  
MICHAELS, DANIEL PHILLIPS,  
NANCY PREDHAM, WALTER WHITE  
and JANINE WILSON,

Respondents.

OAH No. 2011031098

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, State of California, Office of Administrative Hearings, heard this matter on April 28, 2011, in Monterey, California.

Louis T. Lozano, Attorney at Law, Lozano Smith, represented the Monterey Peninsula Community College District.

Priscilla Winslow, Attorney at Law, California Teachers Association, represented respondents Kevin Bransfield, Carolyn Hansen, David Michaels, Nancy Predham and Walter White, who were present, and A.J. Farrar, Daniel Phillips and Janine Wilson, who were not present.

There was no appearance by or on behalf of respondent Kimberly Christoff-Mansfield.

The matter was submitted on April 28, 2011.

**FACTUAL FINDINGS**

1. Douglas R. Garrison made and filed the accusation in his official capacity as Superintendent/President of the Monterey Peninsula Community College District.

2. Respondents Kevin Bransfield, Kimberly Christoff-Mansfield, A.J. Farrar, Carolyn Hansen, David Michaels, Daniel Phillips, Nancy Predham, Walter White and Janine Wilson are academic employees of the district.

3. On March 8, 2011, the district’s Governing Board adopted Resolution No. 2010-2011/96, reducing or eliminating particular kinds of services for the 2011-2012 academic year and directing the superintendent/president to give appropriate notices to academic employees whose positions will be affected by the action.

4. Prior to March 15, 2010, Superintendent/President Garrison gave written notice to respondents and other academic employees of the recommendation that their services will not be required for the 2011-2012 academic year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2011-2012 academic year. An accusation was served on respondents, and all respondents are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

6. On March 8, 2011, in order to address a projected budget shortfall, the board took action to reduce or discontinue the following particular kinds of services (PKS) for the 2011-2012 academic year:

<b>PKS</b>	<b>FTE<sup>1</sup></b>
Academic Support Center Services	1.0
Administration of Justice Courses	1.0
Coaching services/Physical Education Courses	1.0
Dance Courses	1.0
Horticulture Courses	1.0
Interior Design Courses	1.0
International Students Program Services	1.0
Photography Courses	1.0
Physics/Astronomy Courses	1.0
American Sign Language Courses	1.0
Counseling Services	2.0
<b>TOTAL</b>	<b>12.0 FTE</b>

7. Respondents argue that the district’s financial situation does not justify the PKS reductions and proposed layoffs. Although the district expects a reduction in funding next year, it intends to maintain a 10 percent budget reserve, in accordance with board policy. The current budget for the district is approximately \$36 million, meaning that the reserve is approximately \$3.6 million. This reserve amount is well in excess of the \$1.9 million projected salary savings from layoffs required under the worst-case financial scenario. Respondents are not persuasive in their argument that the proposed layoffs should be disallowed, i.e., the district should be forced to use its budget reserve to keep from making the PKS reductions. The board has a duty to assure the fiscal solvency of the district, and its

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<sup>1</sup> FTE stands for full-time equivalent position.

policy of maintaining a 10 percent budget reserve is a proper exercise of its discretion in fulfilling this duty, particularly in these times of economic uncertainty.

8. Education Code section 87743<sup>2</sup> is the statute which authorizes community college districts to lay off academic employees when such layoffs are necessitated by the reduction or elimination of particular kinds of services for the following academic year. That statute provides:

However, the services of no tenured employee may be terminated under this section while any probationary employee, or any other employee with less seniority, is retained to render a service in a *faculty service area* in which the records of the district maintained pursuant to Section 87743.4 reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria. [Italics added.]

Section 87743 requires a district to “make assignments and reassignments in a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.”

9. In 1991, the district and the Monterey Peninsula College Teachers Association (MPCTA) negotiated provisions of their contract regarding placement of faculty members in faculty service areas (FSAs). The preamble to these provisions explained: “The function of Faculty Service Areas (FSAs) is to provide a rational and workable framework within which seniority and ‘bumping’ rights can be exercised by faculty when a reduction-in-force (RIF), or layoff, is being effected.” Under the contract provisions, the district places a faculty member in an FSA at the time of initial employment, and the faculty member is deemed permanently competent in such FSA unless he or she receives an unsatisfactory evaluation in that FSA. After initial employment, a faculty member may apply for placement in an FSA for which he or she has the minimum qualifications. To establish and maintain competency in an employee-initiated FSA, the faculty member must have taught or provided the service in the FSA for two semesters within the past three years and received at least one satisfactory evaluation. Disputes over the denial of an FSA are subject to grievance. The contract incorporates an agreed list of FSAs.

10. Section 87743.4, which is referenced in section 87743, provides:

Each district shall maintain a permanent record for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency

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<sup>2</sup> All statutory references are to the Education Code.

pursuant to district competency standards. The record shall be maintained in the faculty member's personnel file.

11. Several of the respondents were unaware of FSAs until recently, and they testified that had they known about FSAs and their importance in a layoff, they would have pursued placement in another FSA. Also, two respondents testified that their personnel files do not show their FSAs. These respondents are all members of MPCTA and have received a copy of the union contract containing the provisions on FSAs.

12. In 2008, a faculty committee made recommendations to update the 1991 FSA list, but the recommendations were not adopted. In October 2009, MPCTA President Mark Clements requested a copy of the current FSAs, seniority list and hiring dates from Barbara Lee, Associate Dean of Human Resources. In his e-mail to Lee, Clements stated: "While we are not in the position of other colleges in lay-offs. [*Sic.*] I want to be proactive in protecting our members and do what we can to be prepared." Lee believes she provided Clements with the items he requested.

13. Respondents challenge the proposed layoffs on the grounds that the district violated their due process rights by failing to notify them of their FSAs. However, there is no legal requirement that the district notify faculty members of their FSAs or their rights relating to FSAs under the contract negotiated with their union. The district apparently did not have FSAs in all faculty personnel files, as required by section 87743.4, but any faculty member who did not know his or her FSA could have obtained that information by asking the district. Also, the faculty union could have provided information to its members about FSAs.

14. Respondent Carolyn Hansen, who has a seniority date in 1980, teaches American Sign Language full-time in the World Languages Department. Hansen has a special education teaching credential, and prior to 1995 she provided counseling and other supportive services for deaf/hearing impaired students and physically disabled students. When a list of faculty members and their FSAs was compiled in 1991, Hansen was listed as having FSAs in Sign Language and Special Education. However, the Special Education FSA has an asterisk after it, denoting "Employee Initiated and/or Must Maintain Competency to Retain FSA." Hansen was not aware of her FSAs, and she never applied for the Special Education FSA. She was also not aware that she had to do something to maintain her competency in Special Education.

15. Respondents' counsel seemed to be asserting that Carolyn Hansen should have bumping rights in the Special Education FSA, since the asterisk on the FSA list must have been a mistake. But even if Hansen did not apply for her Special Education FSA (i.e., the FSA was not employee-initiated), the asterisk could mean that for some other reason she was required to maintain competency to retain the FSA. Since she has not provided services in Special Education since 1994, Hansen is no longer competent in that FSA, and she has not established that she should be deemed permanently competent. Hansen does not have bumping rights in the Special Education FSA.



16. Most of the services to be reduced or eliminated next year have only one full-time faculty member in that FSA, and those employees are subject to layoff in this proceeding. Respondents contend that these PKS reductions and layoffs should be disallowed because the college did not follow its Procedure for Academic Program Discontinuance. However, the college does not plan to discontinue any of the programs included in the PKS reductions, so respondents' contention is without merit. Some programs may be suspended, but in others the college will offer some courses next year (but not a full-time load). Adjunct faculty will not be hired to teach these courses before the courses are offered to laid-off faculty members.

17. Superintendent/President Garrison testified that determining the areas for PKS reductions was a difficult process that involved consultation with senior officers of the college and consideration of many factors. To the extent possible, the district wants to preserve general education transfer courses and courses in career and technical education. Enrollment trends, awards of certificates, and job placement were among the factors considered. Ultimately, hard choices had to be made; as Garrison testified, "no courses have no merit."

The PKS reductions include general education transfer courses, career and technical education courses, and popular courses with stable or increasing enrollment. The reductions include International Students Program Services, the FSA in which respondent Nancy Predham is the sole faculty member. Predham's program brings international students to the college, generating revenue from the out-of-state tuition they pay.

Garrison hopes that the worst-case financial scenario will not happen and the district will be able to avoid the PKS reductions and reinstate faculty members subject to layoff.

18. Respondents contend that the district has not established that the layoffs are "related to the welfare of the colleges and the students thereof" as required by section 87740, but this contention is without merit. In determining how to allocate its resources, a community college district is given discretion to reduce or eliminate particular kinds of services. While any reduction or elimination of services is arguably detrimental to at least some students (not to mention college employees), in the absence of a showing that the district's decision is arbitrary or capricious, its action is related to the overall welfare of the college and its students. In this case, the decision to reduce or discontinue the services set forth in Finding 6 is neither arbitrary nor capricious but rather a proper exercise of the district's broad discretion.

19. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

20. No employee with less seniority than any respondent is being retained by the district to perform services in a faculty service area for which any respondent has met the minimum qualifications and competency criteria.

## LEGAL CONCLUSIONS


1. Jurisdiction for this proceeding exists pursuant to Education Code sections 87740 and 87743.

2. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 87743 to give notice to respondents that their services will not be required for the 2011-2012 academic year. The cause relates solely to the welfare of the college and the students thereof within the meaning of Education Code section 87740.

## ORDER

Notice may be given to respondents that their services will not be required for the 2011-2012 academic year because of the reduction or elimination of particular kinds of services.

DATED: May 3, 2011

  
\_\_\_\_\_  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings

## ATTACHMENT C

A.J. Farrar  
Daniel Phillips  
Walter White  
Sunshine Giesler  
Nancy Predham  
Kevin Bransfield  
David Michaels  
Alethea DeSoto  
Carolyn Hansen  
Kimberly Christoff-Mansfield

# Monterey Peninsula Community College District

## Governing Board Agenda

May 12, 2011

New Business Agenda Item No. B

Human Resources  
College Area

### Proposal:

Hold public hearing on initial proposal of Monterey Peninsula College Teachers Association (MPCTA)/CTA/NEA for negotiations for 2011/12.

### Background:

The current bargaining agreement with MPCTA expires on June 30, 2012. However, the contract may be opened at any time upon mutual agreement of the parties. MPCTA is surveying its membership to determine if members are willing to authorize discussions regarding negotiable items which could address budget concerns for 2011-2012. Surveys are due May 10, 2011.

Governing Board Policy 5210 implements Government Code Section 3547 that requires public notice of matters to be negotiated. In accordance with the aforementioned policy and code, the Governing Board must, following the presentation of the initial proposal of the employee association, receive public comment at an open board meeting. If authorized by the membership, the initial proposal will be presented at the Board Meeting. If authorization is not granted, this item will be pulled from the agenda.

### Budgetary Implications:

The outcome of negotiated agreements will determine any budgetary implication.

**PUBLIC HEARING:** Initial proposal of Monterey Peninsula College Teachers Association (MPCTA)/CTA/NEA for negotiations for 2011-2012.

Recommended By:



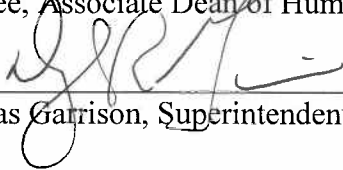
Barbara Lee, Associate Dean of Human Resources

Prepared By:



Barbara Lee, Associate Dean of Human Resources

Agenda Approval:

  
Dr. Douglas Garrison, Superintendent/President

# Monterey Peninsula Community College District

## Governing Board Agenda

May 12, 2011

New Business Agenda Item No. C

President's Office  
College Area

### **Proposal:**

That the Governing Board adopt the resolution of intent to convey easement on a portion of the Marina Education Center to Pacific Bell Telephone Company (AT&T) for the purpose of construction and maintenance of aerial and underground communication facilities.

### **Background:**

The Marina Education Center's permanent academic facilities are currently under construction on the parcel located at 3<sup>rd</sup> Avenue and Imjin Parkway. AT&T has requested an easement on this parcel for the relocation, construction, and maintenance of aerial and underground communication equipment necessary to provide telecommunications and data service to MPC's Marina Education Center.

AT&T requires the easement on district property due to the planned widening of Imjin Parkway; the entire road right of way will be used for this purpose and AT&T must relocate their communication equipment. The easement is approximately 15' x 20' and the communication facility will be self-contained and fenced, with access through the Imjin Parkway right of way. No disruption of the college's program is anticipated as the proposed location of the easement will be within a landscaping area. In addition to providing telecommunication and data service to the Marina Education Center, AT&T will also be able to serve the area west of this parcel with the communication facility. In return for the easement, AT&T will not charge MPC for installation of the telecommunication equipment serving the college's facilities.

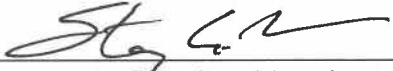
Also, under the terms of the Quitclaim Deed from the U.S. Department of Education, during the 30 year use period, the district may not sell, lease, or transfer any interest in the Marina Education Center parcels without advance written authorization of the department. This authorization has been secured and is attached.


If the Governing Board adopts a resolution of intent to convey the easement, Education Code Section 81311 requires the district to hold a public hearing on the question of granting the easement not less than 10 days after adoption of the resolution. The public hearing will be held at the May 24 Board meeting. In accordance with Education Code Section 81312, the district must post copies of the resolution signed by the governing board members or by a majority within the district not less than 10 days before the meeting to consider conveyance of the easement; and by publishing notice of the meeting in a newspaper of general circulation not less than 5 days before the meeting.

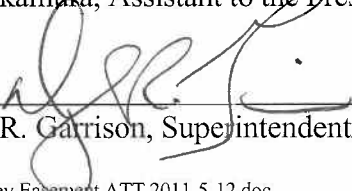
### **Budgetary Implications:**

Funds to cover the cost of publishing the notice in a local newspaper are budgeted.

**RESOLUTION:** **BE IT RESOLVED,** That Resolution No. 2010-2011/121 – Resolution of Intent to Convey Easement to Pacific Bell Telephone Company, DBA AT&T California, at Marina Education Center, be approved; and that a public hearing on the conveyance of the easement be scheduled for the next regular meeting of the Governing Board of Monterey Peninsula Community College District, on May 24, 2011, 3:00 PM.

**Recommended By:**   
\_\_\_\_\_  
Stephen Ma, Vice President for Administrative Services

**Prepared By:**   
\_\_\_\_\_  
Vicki Nakamura, Assistant to the President

**Agenda Approval:**   
\_\_\_\_\_  
Douglas R. Garrison, Superintendent/President

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**MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT**

**RESOLUTION NO. 2010-2011/121**

**RESOLUTION OF INTENTION TO CONVEY EASEMENT TO PACIFIC BELL TELEPHONE COMPANY,  
DBA AT&T CALIFORNIA, AT MARINA EDUCATION CENTER**

**WHEREAS** Education Code Section 81310 authorizes community college districts to convey to any public corporation or any private corporation engaged in the public utility business an easement to lay, construct, reconstruct, maintain and operate electric or telephone lines used in connection with such facilities over land belonging to the community college district; and,

**WHEREAS** the Monterey Peninsula Community College District owns real property known as Marina Education Center and more particularly described as Assessor's Parcel No. 031-251-003, located in the City of Marina, County of Monterey, State of California, and further described in the attached Easement; and,

**WHEREAS** Pacific Bell Telephone Company, a California corporation, dba AT&T California ("AT&T"), has requested a permanent easement on a portion of real property owned by the Monterey Peninsula Community College District for the purpose of constructing, operating, inspecting, repairing, maintaining and replacing aerial and underground communication facilities and appurtenances; and,

**WHEREAS** the U.S. Department of Education has provided written authorization on April 21, 2011, for the Monterey Peninsula Community College District to convey this easement in accordance with the terms and conditions of the October 18, 2004 Quitclaim Deed property to the District for the real property in use as the Marina Education Center,

**NOW THEREFORE BE IT RESOLVED** that the Monterey Peninsula Community College District intends to convey the above-described easement to AT&T,

**BE IT FURTHER RESOLVED** that per Education Code Section 81311 a public hearing will be held at the next regular meeting of the Governing Board of Monterey Peninsula Community College District, May 24, 2011, 3:00 PM and that notice of the public hearing be posted and advertised per Education Code Section 81312.

**PASSED AND ADOPTED** by the Governing Board of the Monterey Peninsula Community College District, County of Monterey, California, this 12th day of May 2011.

By \_\_\_\_\_  
Lynn Davis, Chair

By \_\_\_\_\_  
Charles Brown, Vice Chair

By \_\_\_\_\_  
Margaret Anne Coppernoll, Member

By \_\_\_\_\_  
Charlie Page, Member

By \_\_\_\_\_  
Loren Steck, Member

Attest: \_\_\_\_\_  
Douglas R. Garrison, Secretary to Governing Board



RECORDED AT THE REQUEST OF:  
**AT&T RIGHT OF WAY DEPT .**  
**c/o TERRY HAMLIN**  
**515 CHAPPELL ROAD**  
**WATSONVILLE, CA 95076**

**WHEN RECORDED RETURN TO:**  
**AT&T RIGHT OF WAY DEPT.**  
**c/o TERRY HAMLIN**  
**515 CHAPPELL ROAD**  
**WATSONVILLE, CA 95076**

No Documentary Transfer Tax Due  
 This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911)  
 Computed on Full Value of  
 Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale  
**AT&T Agent:** Terry Hamlin, Manager, Right of Way: \_\_\_\_\_

**Project No. 7934072**  
**FILE NO.: MNT82125-01**  
**APN: 031-251-003**

## GRANT OF EASEMENT

The undersigned, **MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT;** Grantor(s) hereby grant(s) to **PACIFIC BELL TELEPHONE COMPANY, a California Corporation, dba AT&T California ("AT&T"),** its associated and affiliated companies, its and their successors, assigns, lessees and agents, hereinafter referred to as "Grantees", an easement to construct and maintain (place, operate, inspect, repair, replace and remove) such aerial and underground communication facilities as Grantees may from time to time require (including ingress thereto and egress therefrom) consisting of poles, anchors, guys, cables, wires, crossarms, handholes, markers, pedestals, terminal equipment cabinets, conduits, manholes, handholes, markers, pedestals, other associated electrical conductors, underground structures, necessary fixtures and appurtenances in, over, under and upon that certain real property in the City of Seaside, County of Monterey, State of California, described as:

See **EXHIBIT "A"** attached hereto and made a part hereof for Legal Description of property.

The easement shall be located on the following portion of the above described real property:

See **EXHIBIT "B"** attached hereto and made a part hereof of Easement Drawing Detail.

Grantor(s) further grants to and confirms in Grantee(s) all necessary rights for Grantee(s) existing poles, wires and other appurtenances located on said lands.

Grantor(s) also grant(s) to Grantees the right to trim such tree foliage and to cut such limbs and roots on said property as may be necessary for the protection of said facilities.

Grantor(s) shall not erect or construct any building or other structure or drill or operate any well within said easement.

Grantees shall be responsible for damage caused intentionally or by any negligent act or omission of Grantees, its agents or employees while exercising the rights granted herein.

Grantor(s) hereby warrant that he/she/they are the sole holder(s) of legal, equitable and record title to the subject real property herein, and that they possess the authority to grant the within easement and convey the rights and privileges herein to Grantee(s). Should any defect of the within grant become later known to the parties based upon inadequate capacity and/or insufficiency of all necessary Grantor(s) to execute the same, all appropriate Grantor(s) shall execute and deliver to Grantee(s) for recording a new, amended or correction deed or Grant, as appropriate, to maintain the within easement as herein intended, all at no cost to Grantee(s).

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.

Executed this \_\_\_\_\_ day of \_\_\_\_\_;

**MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT**

\_\_\_\_\_  
By Its: \_\_\_\_\_  
(print name & Title)

\_\_\_\_\_  
By: \_\_\_\_\_  
(print name & Title)

7934072  
ATT0901-68

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

City of Marina  
Monterey County  
A.P.N. 031-251-003

An easement, over and across all that portion of Parcel L23.1.4 of Record of Survey as said parcel is shown and delineated on map filed for record July 14, 2004 in Volume 27 of Survey Maps at Page 80, Monterey County Records, being a portion of Fort Ord Military Reservation, in the City of Marina, County of Monterey, State of California, described as follows:

**COMMENCING** at the Southwest corner of said Parcel L23.1.4, said corner being at the intersection of the East right of way line of 3<sup>rd</sup> Avenue and the North right of way line of Imjin Parkway, as shown on said map; thence South 73° 16' 26" East 177.00 feet along said North right of way line to the **POINT OF BEGINNING**; thence at right angles North 16° 43' 34" East 15.00 feet; thence at right angles South 73° 16' 26" East 20.00 feet; thence at right angles South 16° 43' 34" West 15.00 feet to said North right of way line; thence at right angles North 73° 16' 26" West 20.00 feet along said North right of way line to the point of beginning.

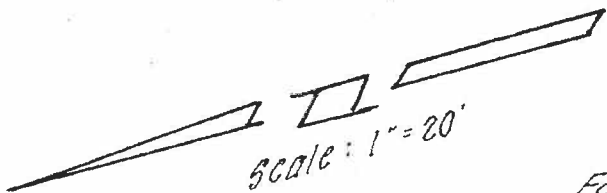
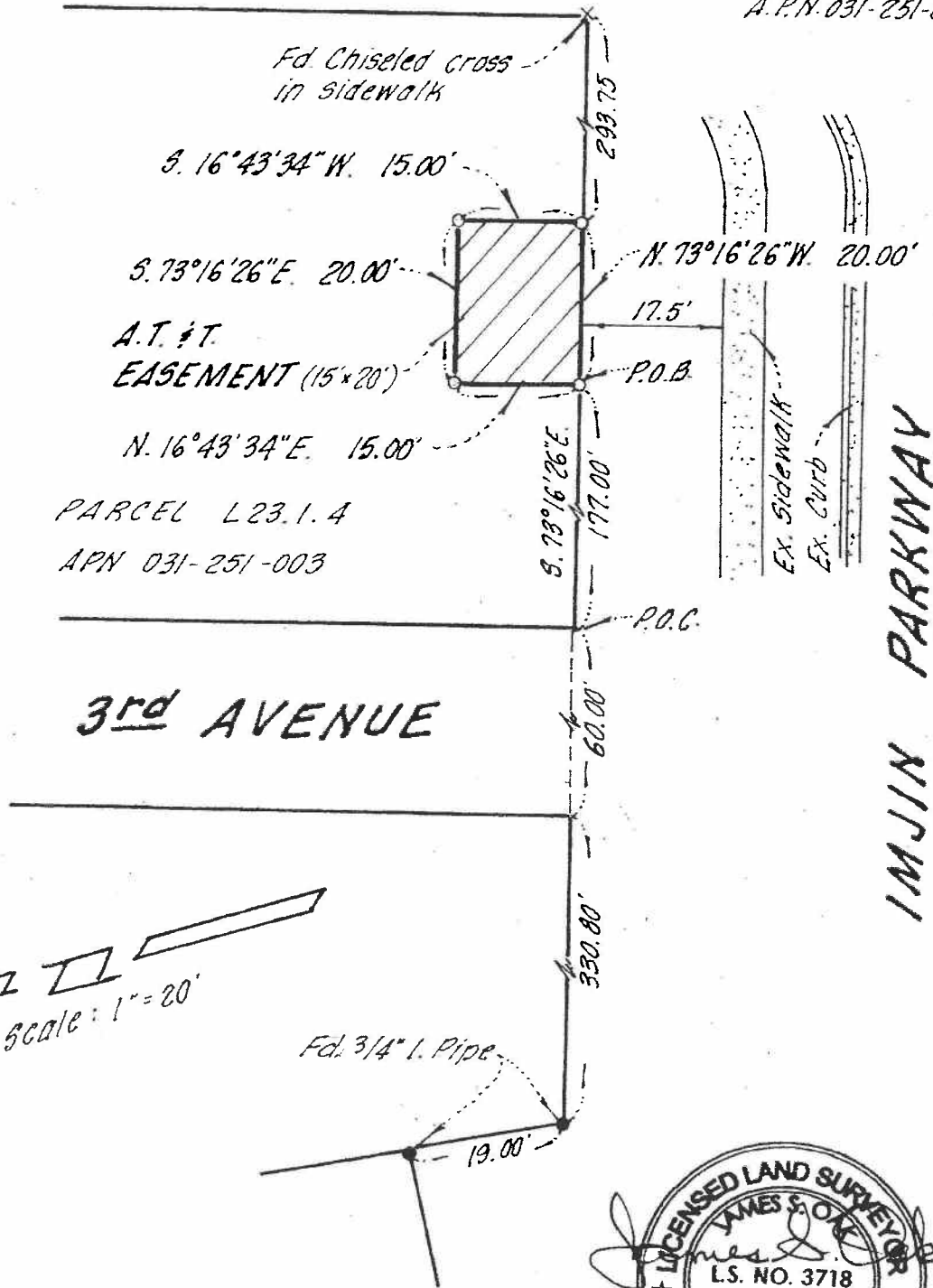
See attached Exhibit "B"



7934072

# EXHIBIT "B"

Marina  
Monterey Co.  
A.P.N. 031-251-003



o = Set 1/2" rebar



Surveyed Dec. 1, 2010

**From:** Shawyer, Barbara  
**Sent:** Thursday, April 21, 2011 6:48 PM  
**To:** Vicki Nakamura  
**Subject:** RE: Status of Request for Easement for Telecommunications/Data Provider at MPC Marina Education Center

Ms. Vicki Nakamura  
Monterey Peninsula College  
980 Fremont St.  
Monterey, CA 93940-4799

Dear Ms. Nakamura:

The U.S. Department of Education (Department) is herewith pleased to grant its written authorization to Monterey Peninsula College for the Grant of Easement provided with your electronic correspondence of April 21, 2011 in accordance with the second condition subsequent of our October 18, 2004 deed and federal regulations set forth under 34 CFR 12. Authorization is herewith provided for MPC to grant an easement to construct and maintain aerial and underground communication facilities over and across a portion of Parcel L23.1.4 as described in the Grant of Easement to Pacific Bell Telephone Company dba California AT&T attached to your April 21<sup>st</sup> communication. This authorization is granted upon condition that MPC's easement shall be subject and subordinate to the terms and conditions of the Quitclaim Deed from the U.S. Department of Education, including but not limited to condition subsequent two.

Except as provided in the Easement herein authorized, Monterey Peninsula College must continue to comply in all respects with the terms and conditions of its deed and nothing in this authorization shall be construed as amending, reforming or releasing any of the covenants, conditions or restrictions contained in our deed.

Please understand that any changes, amendments or extensions to the above-approved Grant of Easement is not authorized without the prior written approval of the Department as required by the deed and federal regulations.

Please feel free to contact me at (202) 401-0044 or via e-mail if there are any questions.