Meeting of the Central Valley Flood Protection Board
September 19, 2008

Draft Staff Report
DWR Floodway Protection Section

Item

Consider approval of Permit No. 18392 requesting Central Valley Flood Protection Board approval of an encroachment permit (Attachment A) to install a fiber optic cable across channel and attach to existing utility poles on each side of Mosher Slough.

Applicant

Sunesys, LLC

Location

The project is located in Stockton west of El Dorado Street and north of Hammer Lane. (Mosher Slough, San Joaquin County see Attachment B).

Description

To install a fiber optic cable across channel and attach to existing utility poles on each side of Mosher Slough.

Agency Comments and Endorsements:

- The U. S. Army Corps of Engineers has endorsed this application (Permit Exhibit A).
- San Joaquin County Flood Control & Water Conservation District has endorsed this application.

Proposed CEQA Determination of Exemption:

Board staff has prepared the following CEQA determination:

The California Public Utilities Commission (PUC), as lead agency under CEQA, approved the project (Stockton Unified School District Network, SCH #2008098011) on August 27, 2008 and determined that the project was categorically exempt under

Classes 15301b/c (existing facilities), 15302c/d (replacement or reconstruction), 15303d (utility extensions) and 15304f (minor trenching or backfilling).

The Board, acting as a responsible agency under CEQA, has reviewed the PUC determination and has independently determined that the project is exempt from CEQA under Classes 15301b/c (existing facilities), 15302c/d (replacement or reconstruction), 15303d (utility extensions) and 15304f (minor trenching or backfilling).

Section 8610.5 Compliance

1. Evidence that the Board admits into its record from any party, State or local public agency, or nongovernmental organization with expertise in flood or flood plain management:

   The Board will make its decision based on the evidence in the permit application and attachments, this staff report, and any other evidence presented by any individual or group.

2. The best available science that related to the scientific issues presented by the executive officer, legal counsel, the Department or other parties that raise credible scientific issues.

   The accepted industry standards for the work proposed under this permit as regulated by Title 23 have been applied to the review of this permit.

3. Effects of the decision on the entire State Plan of Flood Control:

   This project has no effects on the State Plan of Flood Control.

4. Effects of reasonable projected future events, including, but not limited to, changes in hydrology, climate, and development within the applicable watershed:

   None.

Staff Recommendation

Staff recommends that the Board determine the project to be exempt from CEQA and to approve the permit.

List of Attachments

A. Permit
B. Location maps and photos

Attachment A

DRAFT

STATE OF CALIFORNIA
THE RESOURCES AGENCY

CENTRAL VALLEY FLOOD PROTECTION BOARD

PERMIT NO. 18392 BD

This Permit is issued to:

Sunesys, LLC
3550 Charter Park Drive
San Jose, California 95136

To install a fiber optic cable across channel and attach to existing utility poles on each side of Mosher Slough. The project is located in Stockton west of El Dorado Street and north of Hammer Lane (Section 9&16, T2N, R6E, MDB&M, San Joaquin County Flood Control and Water Conservation District, Mosher Slough, San Joaquin County).

NOTE: Special Conditions have been incorporated herein which may place limitations on and/or require modification of your proposed project described above.

(SEAL)

Dated: _____ _____
Executive Officer

GENERAL CONDITIONS:

ONE: This permit is issued under the provisions of Sections 8700 – 8723 of the Water Code.

TWO: Only work described in the subject application is authorized hereby.

THREE: This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

FOUR: The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and the Central Valley Flood Protection Board.

FIVE: Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of the Central Valley Flood Protection Board.

DWR 3784 (Rev. 1/08)

SIX: This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 15 day's notice.

SEVEN: It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

EIGHT: This permit does not establish any precedent with respect to any other application received by the Central Valley Flood Protection Board.

NINE: The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

TEN: The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the permittee shall defend and shall hold each of them harmless from each claim.

ELEVEN: The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

TWELVE: Should any of the work not conform to the conditions of this permit, the permittee, upon order of the Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

SPECIAL CONDITIONS FOR PERMIT NO. 18392 BD

THIRTEEN: All work approved by this permit shall be in accordance with the submitted drawings and specifications except as modified by special permit conditions herein. No further work, other than that approved by this permit, shall be done in the area without prior approval of the Central Valley Flood Protection Board.

FOURTEEN: The permittee shall maintain the permitted encroachment(s) and the project works within the utilized area in the manner required and as requested by the authorized representative of the Department of Water Resources, San Joaquin County Flood Control & Water Conservation District or any other agency responsible for maintenance.

FIFTEEN: The permittee shall contact the Department of Water Resources by telephone, (916) 574-1213, and submit the enclosed postcard to schedule a preconstruction conference. Failure to do so at least 10 working days prior to start of work may result in delay of the project.

SIXTEEN: The Central Valley Flood Protection Board, Department of Water Resources, and San Joaquin Flood Control & Water Conservation District shall not be held liable for any damages to the permitted encroachment(s) resulting from flood fight, operation, maintenance, inspection, or emergency repair.

SEVENTEEN: The permittee may be required, at permittee's cost and expense, to remove, alter, relocate, or reconstruct all or any part of the permitted encroachment(s) if removal, alteration, relocation, or reconstruction is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause. If the permittee does not comply, the Central Valley Flood Protection Board may remove the encroachment(s) at the permittee's expense.

EIGHTEEN: The permittee shall be responsible for repair of any damages to Mormon Slough due to construction, operation, or maintenance of the proposed project.

NINETEEN: The permittee is responsible for all liability associated with construction, operation, and maintenance of the permitted facilities and shall defend and hold harmless the State of California, or any departments thereof, from any liability or claims of liability associated therewith.

TWENTY: If the project, or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project under direction of the Central Valley Flood Protection Board and Department of Water Resources, at the permittee's or successor's cost and expense.

TWENTY-ONE: No construction work of any kind shall be done during the flood season from November 1 to April 15 without prior approval of the Central Valley Flood Protection Board.

TWENTY-TWO: A minimum clearance of 21 feet shall be provided between the levee crown and the overhead fiber optic cable crossing.

TWENTY-THREE: All debris generated by this project shall be disposed of outside the Mormon Slough floodway.

TWENTY-FOUR: The project site shall be restored to at least the condition that existed prior to commencement of work.

TWENTY-FIVE: A letter from the Department of the Army dated August 25, 2008, attached to this permit as Exhibit A is in reference to this project.

TWENTY-SIX: Any additional encroachment(s) to Mormon Slough require an approved permit from the Central Valley Flood Protection Board and shall be in compliance with the Central Valley Flood Protection Board's regulations (Title 23 California Code of Regulations).

Exhibit A

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO
ATTENTION OF

Flood Protection and Navigation Section (18392)

AUG 25 2008

Mr. Jay Punia, Executive Officer
Central Valley Flood Protection Board
3310 El Camino Avenue, Room LL40
Sacramento, California 95821

Dear Mr. Punia:

We have reviewed an application for a permit by Sunesys, LLC (application Number 18392). These plans include installing a fiber optic cable across Mosher Slough and attaching the fiber optic cable on either side to existing utility poles. The project is located in Stockton, west of El Dorado Street and north of Hammer Lane, at 38.0282°N 121.3206°W NAD 83, San Joaquin County, California.

The District Engineer has no comments or recommendations regarding flood control because the proposed work does not affect a federally constructed project.

A Section 10 and/or Section 404 permit may be required. Please advise the applicant to contact the U.S. Army Corps of Engineers, Sacramento District, Regulatory Division, 1325 J Street, Sacramento, California 95814, telephone (916) 557-5250.

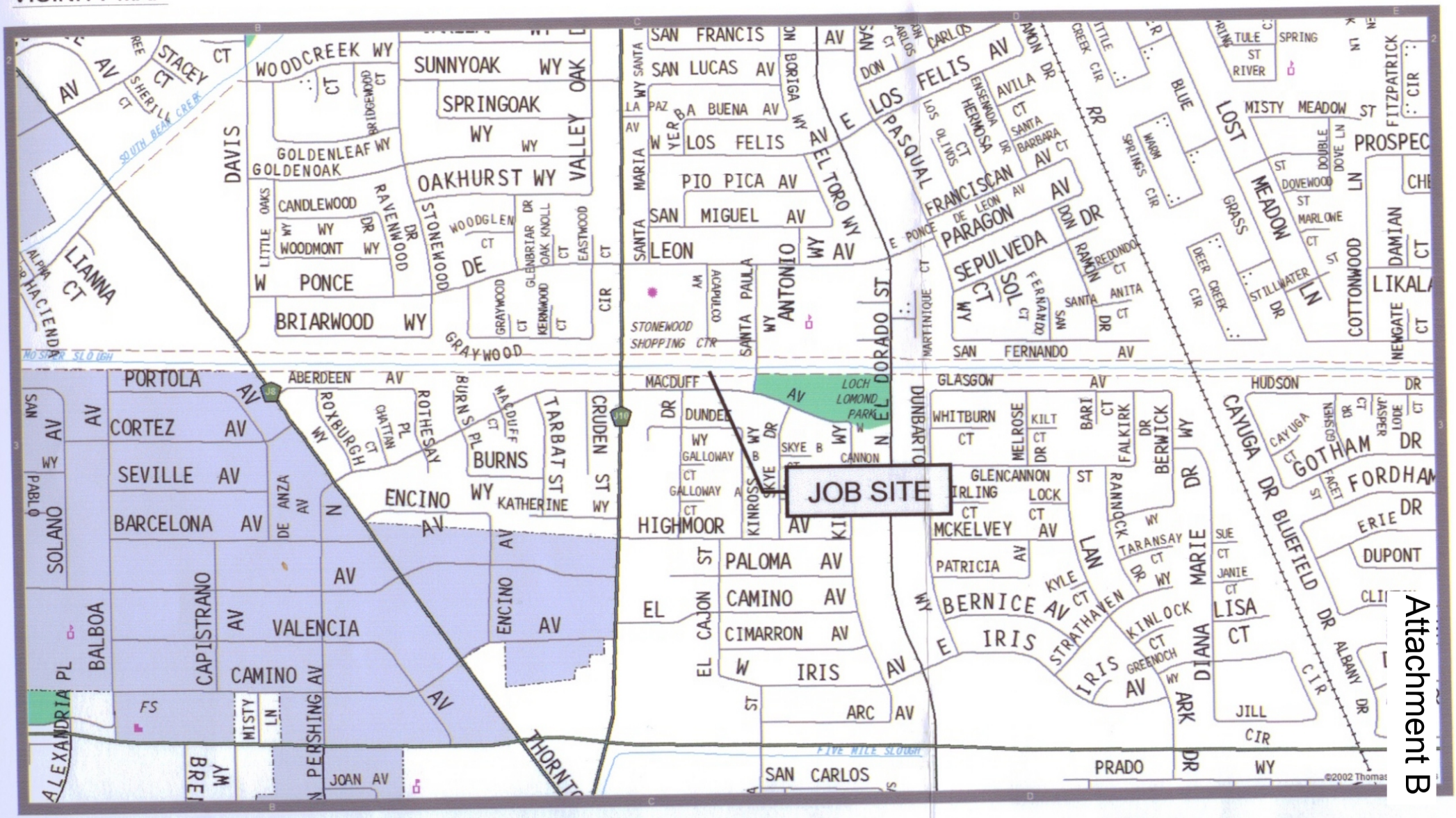
If you have any questions concerning our comments on this permit application, please contact Ms. Meegan Nagy at (916) 557-7257 or Mr. Robert Murakami at (916) 557-6738.

Sincerely,

Meegan G. Nagy, P.E.
Chief, Flood Protection and Navigation Section

Copy Furnished:
Mr. Jeremy Arrich, Chief, Flood Project Integrity and Inspection Branch,
3310 El Camino Avenue, Suite LL30, Sacramento, CA 95821

VICINITY MAP



Attachment B

DETAIL 3

Attachment B