

**DEPARTMENT OF FISH AND GAME**

BAY DELTA REGION

(707) 944-5520

Mailing address:

POST OFFICE BOX 47

YOUNTVILLE CALIFORNIA 94599

Street address:

7329 SILVERADO TRAIL

NAPA CALIFORNIA 94558



October 3, 2007

Notification Number: 1600-2007-0323-3

Michael Fennell  
Suscol Creek Winery  
3520 Jomar Drive  
Napa, California 94558

**1602 LAKE AND STREAMBED ALTERATION AGREEMENT**

This agreement is issued by the Department of Fish and Game pursuant to Division 2, Chapter 6 of the California Fish and Game Code:

**WHEREAS**, the applicant Michael Fennell, Suscol Creek Winery, hereafter called the Operator, submitted a signed NOTIFICATION proposing to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed or lake of the following waters: Suscol Creek, tributary to the Napa River, in the County of Napa, State of California; and

**WHEREAS**, the Department has determined that such operations may substantially adversely affect existing fish and wildlife resources including water quality, hydrology, aquatic or terrestrial plant or animal species; and

**WHEREAS**, the project has undergone the appropriate review under the California Environmental Quality Act; and

**WHEREAS**, the Operator shall undertake the project as proposed in the signed PROJECT DESCRIPTION and PROJECT CONDITIONS (attached). If the Operator changes the project from that described in the PROJECT DESCRIPTION and does not include the PROJECT CONDITIONS, this agreement is no longer valid; and

**WHEREAS**, the agreement shall expire on December 31, 2010; with the work to occur between June 1 and October 31 and

**WHEREAS**, nothing in this agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of the responsibility for compliance with applicable Federal, State, or local laws or ordinances. Placement, or removal, of any material below the level of ordinary high water may come under the jurisdiction of the U. S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act;

**THEREFORE**, the Operator may proceed with the project as described in the PROJECT DESCRIPTION and PROJECT CONDITIONS. A copy of this agreement, with attached PROJECT DESCRIPTION and PROJECT CONDITIONS, shall be provided to contractors and subcontractors and shall be in their possession at the work site.

Failure to comply with all conditions of this agreement may result in legal action.

This agreement is approved by:

A handwritten signature in black ink, appearing to read "Charles Armor", is written over the text "This agreement is approved by:".

Charles Armor  
Regional Manager  
Bay Delta Region

cc: Lieutenant Richardson

DEPARTMENT OF FISH AND GAME  
BAY DELTA REGION  
(707) 944-5520  
Mailing address:  
POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94599  
Street address:  
7329 SILVERADO TRAIL  
NAPA, CALIFORNIA 94558



Notification Number: 1600-2007-0323-3

Suscol Creek,  
tributary to Napa River,  
Napa County

Michael Fennell  
Suscol Creek Winery  
3520 Jomar Drive  
Napa, California 94558

### PROJECT DESCRIPTION and PROJECT CONDITIONS

#### **Description:**

The project involves non native invasive Himalayan blackberry (*Rubus discolor*) along Suscol Creek, tributary to the Napa River south of Soscol Ferry Road in Napa County (APN# 057-170-018). The site will be the future location of the Suscol Creek Winery as approved by the County of Napa. Areas covered under this agreement include the Suscol Winery property west to the private road bridge (Napa Sanitation property). Due to recent storm events and changes to area management, blackberry has established over a large area within the creek and along its banks. Applicant is proposing to remove blackberry with a rubber tracked tractor and mulch onsite. In order to prevent further invasive establishment, DFG is requiring that the area be planted in native species after operation. Herbicides will be applied to the blackberry resprouts and may need to be reapplied within the year.

#### **Conditions:**

1. Project work shall be conducted as described in the Streambed Alteration Agreement application except as modified below.
2. Project work on within the bed, bank or channel shall be limited to the period between June 1 and October 31 during times of no stream flow. Revegetation may occur year round. If the Operator needs more time to complete the authorized activity, the work period may be extended on a day-to-day basis by Corinne Gray at (707) 944-5526.
3. At least 3 business days before construction, Operator shall notify Corinne Gray, Environmental Scientist, by email at [cgray@dfg.ca.gov](mailto:cgray@dfg.ca.gov). Notification shall include the start date, Streambed Alteration Agreement number and contact information.
4. Areas denuded of vegetation shall be replanted with native tree and shrub species within 2 years of non native invasive removal. Material shall be collected from local native species to the greatest extent possible. Appropriate native plants and spacing can be

~~found in the "California Salmonid Stream Habitat Restoration Manual."~~ The most current version of the manual is available at: <http://www.dfg.ca.gov/habitats>.

5. Plantings shall not be installed unless the necessary irrigation can be installed concurrently.
6. To ensure a successful revegetation effort, all plantings shall be monitored and maintained, including irrigation, as necessary for five years. All plantings shall have a minimum of 80% success at the end of 5 years. If the survival and/or cover requirements are not meeting these goals, the Operator is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.
7. If necessary, willow thinning for bioengineering material shall be conducted in such a manner as to encourage willows to achieve mature overstory vegetation. Thinning of willows shall focus on removal of lower branches that will impede lower flows. At no time shall more than 1/3 of a willow be harvested. Care shall be taken during harvest not to trample or over harvest willow sources.
8. No phase of the project may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm event if that construction phase may cause the introduction of sediments into the stream. Seventy-two-hour weather forecasts from the National Weather Service shall be consulted prior to start up of any phase of the project that may result in sediment runoff to the stream.
9. No native trees shall be removed. Only those branches in the lower 1/3 of any tree and less than four inches in diameter may be pruned to accommodate project activities. All pruned material shall be removed from the area and properly disposed of. All removed vegetation and debris shall be moved outside the normal high-water mark prior to inundation by water. All removed vegetation and debris shall be disposed of according to State and local laws and ordinances.
10. Only herbicides registered with the California Department of Pesticide Regulation and approved for use within aquatic environments shall be used within 50 feet of the stream zone. All herbicides shall be applied in accordance with regulations set by the California Department of Pesticide Regulation. All herbicides shall be used according to labeled instructions. Labeled instructions for the herbicide used shall be made available to the Department upon request.
11. When applying herbicides, great care shall be taken to avoid contact with any native vegetation. To prevent airborne transfer of herbicide, applications shall only occur on calm days (wind less than 5 miles per hour). Pesticide mixing sites shall only be located at existing road sites outside of the stream.
12. All mulch created from blackberry removal operation shall be removed from the stream channel to the greatest extent possible. Mulch produced outside the banks of Suscol Creek shall be removed or spread thinly to allow for native growth.

13. All invasive exotic plants at the work site shall be removed and disposed of properly. The Operator shall ensure that the spread or introduction of invasive exotic plants shall be avoided to the maximum extent possible. Disposal sites shall be located at least 50 feet from the stream. Composted material may need to be treated appropriately to prevent sprouting and reinfestation.

**General:**

14. This agreement does not allow for the take, or incidental take of any State or Federal listed threatened or endangered listed species. Any unauthorized take of such listed species may result in prosecution.
15. At DFG's request, Operator shall provide DFG with information necessary to establish compliance with this Agreement.
16. To the extent that any provisions of this Agreement provide for activities that require the Operator to traverse another owner's property, such provisions are agreed to with the understanding that the Operator possesses the legal right to so traverse. In the absence of such right, any such provision is void.
17. DFG personnel or its agents may inspect the work site at any time in the duration of the construction, revegetation, or monitoring phases of this project.
18. In the event that the project scope, nature, or environmental impact is altered by the imposition of subsequent permit conditions by any local, state or federal regulatory authority, the Operator shall notify DFG of any imposed project modifications that interfere with compliance to Department conditions.
19. If unforeseen problems arise which are causing significant adverse impacts to fish and/or wildlife resources or as further data is accumulated for analysis, the applicant may be required to remediate the situation to the satisfaction of DFG.
20. Debris, soil, silt, bark, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the state. Any of these materials, placed within or where they may enter a stream or lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.
21. Staging/storage areas for equipment, materials, fuels, lubricants, and solvents, will be located outside of the stream's flood channel and associated riparian area. Stationary equipment such as motors, pumps, generators, compressors, and welders located within the dry portion of the stream channel or adjacent to the stream, will be positioned over drip-pans. Vehicles will be moved out of the normal high water area of the stream prior to refueling and lubricating. The Operator shall ensure that contamination of habitat does not occur during such operations. All workers shall be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.
22. All equipment operators will be trained in the procedures to be taken should an accident occur. All workers shall be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.

23. If it becomes impossible to implement the project at a work site without disturbing cultural resources, then activity at that work site will be discontinued.
24. A copy of this agreement must be provided to the contractor and all subcontractors who work within the stream zone and must be in their possession at the work site.
25. The Operator is liable for compliance with the terms of this Agreement, including violations committed by the contractors and/or subcontractors. The Department reserves the right to suspend construction activity described in this Agreement if the Department determines any of the following has occurred:
  - A). Failure to comply with any of the conditions of this Agreement
  - B). Information provided in support of the Agreement is determined by the Department to be inaccurate.
  - C). Information becomes available to the Department that was not known when preparing the original conditions of this Agreement (including, but not limited to, the occurrence of State or federally listed species in the area or risk to resources not previously observed)
  - D). The project as described in the Agreement has changed or conditions affecting fish and wildlife resources change.
26. Any violation of the terms of this Agreement may result in the project being stopped, a citation being issued, or charges being filed with the District Attorney. Contractors and subcontractors may also be liable for violating the conditions of this agreement.

### **Amendments and Renewals**

The Operator shall notify the Department before any modifications are made in the project plans submitted to the Department. Project modifications may require an amendment or a new notification.

This Agreement is transferable to subsequent owners of the project property by requesting an amendment.

To renew the Agreement beyond the expiration date, a written request for a renewal must be submitted to the Department (1600 Program, Post Office Box 47, Yountville, California 94599) for consideration at least 30 days before the Agreement expiration date. A renewal requires a fee. The Fee Schedule can be obtained at [www.dfg.ca.gov/1600](http://www.dfg.ca.gov/1600) or by phone at (707) 944-5520. Renewals of the original Agreement are issued at the discretion of the Department.

To modify the project, a written request for an amendment must be submitted to the Department (1600 Program, Post Office Box 47, Yountville, California 94599). An amendment requires a fee. The Fee Schedule can be obtained at [www.dfg.ca.gov/1600](http://www.dfg.ca.gov/1600) or by phone at (707) 944-5520. Amendments to the original Agreement are issued at the discretion of the Department.

***Please note that you may not proceed with construction until your proposed project has undergone CEQA review and the Department signs the Agreement.***

***I, the undersigned, state that the above is the final description of the project I am submitting to the Department for CEQA review, leading to an Agreement, and agree to implement the***

*conditions above required by the Department as part of that project. I will not proceed with this project until the Department signs the Agreement. I also understand that the CEQA review may result in the addition of measures to the project to avoid, minimize, or compensate for significant environmental impacts:*

APPLICANT

name (print): MICHAEL L. FENNELL

APPLICANT

signature: Michael L. Fennell

Signed the 1<sup>st</sup> day of OCTOBER, 2007