Tax Breaks Expanded For Farm Preservation

What vineyard owners should know about conservation easements

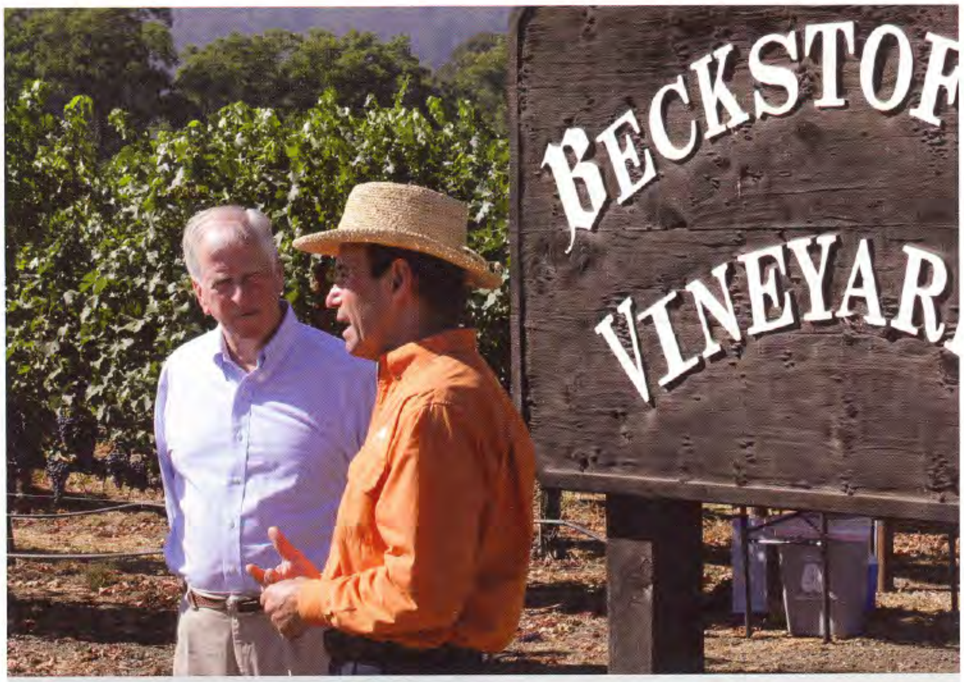
Jim Gordon

Vineyard owners and other farm property owners across the country have 15 months to take advantage of a potentially large tax break if they're willing to dedicate their land to agricultural uses for...well, forever. A measure signed by President Bush on Aug. 17 allows individual and corporate farmers, ranchers and foresters to qualify for larger tax deductions than ever before—and deductions that have a longer shelf life than ever before—when they grant conservation easements on their properties to land trusts. A grower in this situation retains title to the land, continues to farm it and can still sell it or pass it on to an heir, but receives a tax deduction that for some might mean zeroing out their federal income taxes for up to 15 years.

The window of opportunity remains open only until the end of 2007, so growers and estate winery owners who might benefit from this new measure would be smart to focus on the possibilities now. One who already has is Andy Beckstoffer of Napa Valley-based Beckstoffer Vineyards. He campaigned in Washington, D.C., for the measure, and just five days after the president signed the legislation, he gave a conservation easement on 89 acres of the historic To Kalon vineyard in Oakville to The Land Trust of Napa County.

HIGHLIGHTS

- Federal rules approved in August expand the tax incentives for farmland owners who dedicate their properties to farm use or open space in perpetuity through a conservation easement.
- Conservation easements guarantee a property will remain as a farm or open space, while the owner retains title and can continue to live on and farm the land, and sell it or pass it on to heirs.
- Vineyard owners who are land poor and under financial pressure now have an improved alternative to selling their property to developers.



U.S. Congressman Mike Thompson *(left)* spearheaded legislation that provides increased incentives for agricultural landowners to donate properties in perpetuity to land trusts; grapegrower Andy Beckstoffer *(right)* supported the act, and gave an easement on his To Kalon Vineyard to the Land Trust of Napa County.

The To Kalon easement is Beckstoffer's third such donation. Since 2003, he also has granted easements on his 44-acre Carneros Creek Vineyard and his 40-acre Beckstoffer Vineyard X. Beckstoffer and California Congressman Mike Thompson, who spearheaded the new tax incentives in the House Ways and Means Committee, announced the To Kalon donation jointly in a press conference at the vineyard in August.

Now that agricultural property owners can deduct the value of a conservation easement in amounts up to 100% of their adjusted gross income, grapegrowers have something to balance against the equity they could tap if they sold their properties to commercial or residential developers. But committing to a conservation easement takes growers with vision, those who would like to know that their vineyards will bear fruit beyond their lifetimes, and who accept that despite the tax breaks, conservation easements do come with a price.

Here's a summary for *Wines & Vines* readers about who is in the best


Photo by Marissa

Another property entrusted to the Land Trust of Napa County includes this spectacular expanse, 480 acres donated by Joseph Phelps Vineyards. Open space, agricultural use and historic significance are among the attributes evaluated to qualify properties for the program.

position to profit from the tax incentives, and how they work.

First, a property must qualify as a legitimate candidate for a conservation easement. Some properties qualify because of historic designations, some because they will be opened to public use or because they add to scenic public views. A farm property can also qualify if a conservation easement serves a federal, state or local policy goal of preserving open space, preserving wildlife or habitat, or simply preserving farmland. Many counties in California and elsewhere have such policies, and the state of California does, too, in the form of the Williamson Act of 1965. So it's relatively easy for a vineyard to qualify.

Second, the benefits of the new law are greatest for farmers and ranchers who get at least half of their gross income from farming or ranching. An individual owner in this category can take a deduction for a conservation easement up to 100% of his or her adjusted gross income for the year, and a corporation can take up to 100% of taxable income for the year. Nonqualified agricultural property owners—those who make less than 50% of their income from farming—can still deduct up to 50%. The deductions have a 15-year carry-forward. This means that an allowable deduction more than the amount applicable in one year can be saved for later tax returns. The cap formerly was 30% for all landowners, and the carry-forward period was just five years.

Corporations Benefit, Too

In the grapegrowing business, some vineyards are corporate-owned, including family-run vineyards that have incorporated. Corporations that donate a conservation easement get an even more-improved tax break than individuals under the new rules. Previously, corporations could only deduct up to 10% of their taxable income from a conservation easement; now the deduction limit for qualified corporate farmers (those that derive 50% or more of their income from farming) rises to 100%.

Family wineries with estate vineyards often form one corporation to own the winery, and another to own the vineyard. "If you have it that way," Beckstoffer says, "you can probably qualify for the 100% deduction as a grower, and if you don't have it that way, you can make it that way."

A grower investigating the possibility should speak to a lawyer and or tax professional experienced with land conservation early in the process, says Russ Shays, director of public policy for the Land Trust Alliance in Washington, D.C., a group that represents more than 1,500 land trusts across the country and welcomes the new rules.

Then the grower needs a partner to hold the conservation easement in perpetuity, and ensure that the conditions of the easement are met. In many cases that is a land trust. Shays recommends finding a local organization that has experience and that the owner will like working with for the long haul.

Beckstoffer chose to work with the Land Trust of Napa County, which has 46,000 acres under conservation easements now, and which is one of the most active local land trusts in the country. He is also a board member of the organization. He went to Washington, D.C., to push for the expansion of the incentives, and joined with Rep. Mike Thompson in the efforts.

"Andy Beckstoffer and I have been talking about this for a long time," says Thompson, whose 1st Congressional District includes most of California's vineyards north of San Francisco. "He put legs under it and campaigned for it."

"This provision does more to preserve agricultural lands in the long term than any currently available zoning laws can," says Beckstoffer, whose vineyard holdings are among Napa County's largest and most visible. "It truly allows us to be better stewards of the land, ensuring our country's farmland is available for future generations."

Committed to Open Space

Thompson says the measure is designed for "anybody who is committed and passionate about both agriculture and open space—and they're not mutually exclusive. Nationally, agriculture is a core component of our economy and our American heritage, and we have lost thousands of acres of agricultural lands to urban sprawl over the past decade. It is imperative that we find new solutions for protecting these invaluable areas."

At the Land Trust of Napa County, Jamie Keene, the development director, emphasizes that donating a conservation easement is not the same as donating the land. It allows the landowners to stay on the property, to continue farming it, to pass it on to heirs and even to sell it. What they give up are the development rights. A conservation easement means that both the current and subsequent property owners will have to abide by the terms of the easement and keep the property in agriculture.

"It's safe to say that the phone has been ringing a lot more here," since the new rules were signed, Keene says. "It's a tax incentive that doesn't get a whole lot better. This won't change people's hearts, but for anyone who's ever considered preserving their property, I think that right now is really the time."

Appraising Your Assets

After talking with an attorney, a grower wishing to take advantage of a conservation easement needs to get a good appraisal of the property. It's critical, because the tax deductions are based on the value of the donation, which the law defines as the difference between the property's fair market value before and after it's protected. Before, the value may be dramatically affected by its potential to be used for homes, factories or other developed use. Afterward, development is prohibited, except sometimes for family members' homes, expansion of farm buildings and other controlled improvements.

Shay of the Land Trust Alliance says the farmers most likely to reap the greatest benefits are the ones under the most financial pressure to sell their properties for a nonagricultural use. A typical case might involve a grower or rancher in an area where land values have risen quickly. "It's good for a rancher who knows that his property is now worth $1 million, but he's only making $50,000 a year from it. He says he'd love to see the property stay this way, but he can't afford not to sell it. The farm conservation easements were designed for people in that situation."

Growers who look only at the bottom line may not be interested, Shay added. "You always make more money by selling it to a developer. There's nothing you're going to do about that. But for people interested in land preservation and protecting important natural values, it provides a way of getting a perhaps substantial reward."

The new tax incentives apply only to easements granted in 2006 and 2007. The rules are retroactive to the beginning of 2006. The champions of the new rules plan to push for an extension of that time period, but there is no guarantee they will succeed. Since a decision of this importance takes time to make, and an easement takes time to arrange, growers who would like to preserve their vineyards for posterity in exchange for some tax relief should start investigating their options very soon. ■

(For more information: call Andy Beckstoffer at 707-963-9471; see lta.org, the Land Trust Alliance site; napalandtrust.org, the Land Trust of Napa County site; stevesmall.com, the website of an attorney and author who specializes in preserving family lands. To comment on this story, e-mail edit@winesandvines.com.)