June 11, 2026

OFFICE OF THE HEARING EXAMINER
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REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL FOR CURRENT USE ASSESSMENT APPLICATION

SUBJECT: Department of Natural Resources and Parks file no. **E25CT019SH**
Proposed ordinance no. **2026-0093**
Parcel no. **329370-0530**

GROW INC.
Application for Current Use Assessment under the Public Benefit Rating System

Location: 16034 Greenwood Avenue N, Shoreline

Applicant: Grow, Inc
represented by **Eric Todderud**
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Seattle, WA 98102
Telephone: (206) 290-9447
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King County: Department of Natural Resources and Parks
represented by **Bill Bernstein**
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SUMMARY OF RECOMMENDATIONS:

Department's Recommendation: Approve 0.64 acres for 50% reduction in appraised value.
Examiner's Recommendation: Approve 0.64 acres for 90% reduction in appraised value.

PROCEDURAL BACKGROUND:

Per Ch. 20.36 KCC, the Department of Natural Resources and Parks (DNRP) transmitted the subject application along with its Report for Property Enrollment in the Public Benefit Rating System (PBRS) File No. E25CT019SH, to the Examiner.

The Examiner conducted a remote public hearing on the application on May 28, 2026. Bill Bernstein, representing DNRP, presented the application and DNRP's recommendation. Applicant representative, Linda Yue, also participated.

FINDINGS AND CONCLUSIONS:

1. Except as modified herein, the facts set forth in DNRP's staff report and testimony at the May 28, 2026, public hearing are correct and incorporated here by reference. We will provide copies of this report and DNRP's staff report to the King County Council for final action.

2. The property at issue is at 16034 Greenwood Avenue N, Shoreline, Parcel No. 329370-0530, owned by the Applicant, Grow, Inc.

3. The Applicant timely filed an application with King County for current use assessment of the above identified property under the PBRS to begin in 2026.

4. Timely and proper legal notice of the public hearing on the application was provided.

5. The Applicant requested credit for the "public recreation area" open space resource category, as well as the "unlimited public access" and "easement and access categories." DNRP indicates that the application meets the criteria in KCC 20.36.100 for the first two categories, but does not recommend credit for the "easement and access" category.

PBRS categories:	Public recreation area	5
	<u>Bonus</u>:	
	Unlimited public access	5
	Conservation easement	-
	Easement and access	0*
	Total points awarded	10

The DNRP-recommended score of 10 points would result in a 50% reduction in the appraised value of the enrolled portion of the property. Each relevant category is discussed below. The Examiner also includes analysis of the "conservation easement" category, as it is a precursor to qualifying for the "easement and access" category.

6. **Public recreation area – 5 points.** To qualify as an open space resource, KCC 20.36.100.C.11 requires that a property meet the definition of "public recreation area." The property is used as a community gardening and recreational space. The

general public may view and enjoy the garden and its grounds with no barriers to access. DNRP and the Examiner recommend credit for this category.

7. **Bonus: Unlimited public access – 5 points**. Public access means that the "public is allowed access on an ongoing basis for uses such as recreation, education, or training. "Unlimited public access" qualifies an applicant for five points, and requires "year-round access by the general public …without special arrangements with the property owner."

   The Grow property is used as a community gardening and recreational space, and the owner provides year-round, unlimited public access. DNRP and the Examiner recommend credit for this category.

8. **Bonus: Conservation easement or historic preservation easement – 18 points**. While the Applicant did not request credit for this category, it is a precondition of qualifying for the "easement and access" category and was discussed at the public hearing. The open question for qualification in this category is whether a "Restrictive Covenant" that preserves and maintains the Grow property as open space "in perpetuity" qualifies as a "conservation easement." In this instance, I believe that it does.

   "Conservation easement or historic preservation easement" means land on which an easement is voluntarily placed that restricts, in perpetuity, further potential development or other uses of the property. The easement must be approved by the department and recorded with the King County recorder's office.

   In this case, we have a 2023 "Restrictive Covenant" instead of an "easement." It is unambiguous that the covenant intends to restrict, in perpetuity, development or other uses of the property. Specifically, the Restrictive Covenant requires the property owner to "maintain [the property] as open space in perpetuity." 6.4 (Ch. 84.34 RCW and Ch. 26.12 KCC). The Restrictive Covenant was entered into with King County as the grantee, and has been recorded with the King County recorder's office. Any conveyance of the property requires that the restrictions on use run with the land and has strict requirements for conversion or succession of ownership, including vesting the County with the rights and duties associated with the property and transfer of the Grantor's property interest to the County if the grantor cannot meet the covenant terms.

   DNRP's concern appears to be that the word "easement" is not used in the 2023 Restrictive Covenant or the underlying 2021 Agreement that conditioned Grow's purchase of the property on the restricted use of property in perpetuity. While in some situations the word "covenant" may convey less binding restrictions on property than an "easement," that is not the case here.

   Particularly in tax cases, Washington court have recognized restrictive covenants as "negative easements*." City of Olympia v. Palzer*, 107 Wn.2d 225 (1986). Courts treat restrictive covenants as negative easements because they curtail the grantor's exercise of their rights in favor of the grantee. *Lake Arrowhead Community Club, Inc. v. Looney*, 112 Wn.2d 288 (1989). Moreover, state law equates "easement" with "covenant" in identifying the types of legal instruments that can limit future use of property and require it be maintained as "open space." RCW 84.34.210 (a county may acquire an "easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve, selected open space land…"); RCW 64.04.130.

Even if we treat the word covenant here as potentially having the same effect as an easement that will "run with the land" through a transfer of the property, a number of conditions must be met: (1) the agreement must be enforceable, (2) the covenant must "touch and concern" the property, (3) the parties must intend for the restriction to apply to successors in interest, (4) there must be a connection between the parties who made the covenant and between the party who later acquires the property (i.e. vertical and horizontal privity). All of these criteria appear to be met by the applicable covenants in the 2021 and 2023 agreements.

Under Washington statutes and case law, a restrictive covenant may be equated to a "negative easement" and restrict the use of property as open space in perpetuity. The 2021 and 2023 instruments reflect an intent and commitment to limit use of the Grow property as permanent open space and therefore meets the criteria for credit under the "conservation easement" category.

9. **Bonus: Easement and access – 35 points.** "Easement and access" means that the property has at least one qualifying open space resource, unlimited public access or limited public access due to resource sensitivity, and a conservation easement or historic preservation easement in perpetuity in a form and with conditions acceptable to the department. Specific to this proposal, the Grow property can only be eligible in this category if it receives credit for the "public recreation area," "unlimited public access" and "conservation easement" categories. This category also requires that the public access portion of the property be designated as such in the "easement."

The Applicant has requested award of credit under this category and DNRP recommends withholding credit in this category because "public access must be granted in perpetuity within a perpetual conservation easement or historic preservation easement." DNRP's recommendation is to award the category administratively after adoption by Council if the Applicant secures and records an easement with the County that satisfies all category requirements by December 31, 2026.

As established above, the Applicant qualifies for one open space resource (public recreation area) and the bonus category of "unlimited public access." If the Council adopts the analysis above, with its 2021 and 2023 covenants, Grow also meets the requirement that the property have a "conservation easement…in perpetuity in a form and with conditions acceptable to the department." Grow meets all three requirements to qualify for credit in the "easement and access" category.

At the hearing, the parties discussed the 2025 Restrictive Covenant Agreement between Grow and the County to show their obligation to give the public unlimited access to the property.[1] Grow "covenants that it will not limit or restrict [public] access to and use of the Property and Facility" in any way that does not also limit the property owner." The 2025 Agreement establishes a 30-year obligation to make the property and facility "open and available for the public use." In its report, DNRP states that the 2025 Restrictive Covenant Agreement is not sufficient to establish unlimited public access in perpetuity because it "only guarantees public access through 11/19/2055." Ex. 1 at 6.

I believe there is some confusion as to whether "in perpetuity" applies to retention of open space, or to public access. Nothing in KCC 20.36.100.D.4 indicates that "unlimited access" requires public access "in perpetuity." In fact, credit for the "unlimited public access" bonus category, which DNRP believes should be awarded, reflects that the intent of this category is to provide public access throughout the property on an ongoing basis. "Unlimited" applies to the current and planned scope of public use allowed on the property and does not require a commitment to maintain that scope of use in perpetuity. If public access became limited or was cut off, the property owner would no longer qualify for the "unlimited public access" category.

The "in perpetuity" requirement applies to restricting use of the property itself to be maintained as open space. KCC 20.36.100.D.1. Even if public access became limited, property with a suitable "conservation easement" would still qualify for credit in that category because property's limitation to use as open space would be unchanged.

The 2025 Restrictive Covenant represents a commitment to provide unlimited public access to the entire property on an on-going basis. So, for at least the next thirty years, we should expect that Grow will meet all three criteria for the "easement and access" category. Should public access become limited or end entirely at some future date, the Applicant would no longer qualify for bonus categories KCC 20.36.100.D.3 or D.4. See KCC 20.36.190.H. As it stands now, I recommend awarding points in this category.

10. **Contingencies, Conditions, and Requirements.**

A. If the Council disagrees with award of points for the "conservation easement" and/or "easement and access" categories, the Examiner recommends conditional approval of those categories. Qualification for this category should be contingent on recording of a King Conservation Easement by December 31, 2026, that reflects the commitment to maintain the property as open space in perpetuity.

B. Award of credit under this category will result in a current use valuation of 10% of assessed value for the enrolled portion of the property.

C. The Examiner incorporates all conditions and requirements identified in the PBRS Staff Report. Ex. 1.

[1] The 2021 or 2023 documents in the record commit the property to retention of its "open space" status, but do not discuss public access.

11. **Enrollment Acreage**. The Applicant requested 0.64 acres and DNRP recommends 0.64 acres of the subject property be enrolled in the PBRS program. (Enrollment acreage is the entire parcel less the excluded area, as calculated by DNRP. In the event the County Assessor's official parcel size is revised, the PBRS acreage shall be administratively adjusted to reflect that change.)

12. Approval of 35+ points and a current use valuation of 10% of assessed value for 0.64 acres, is consistent with Ch. 20.36 KCC and with the purposes and intent of King County to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of King County and its citizens.

RECOMMENDATION:

1. APPROVE credit for the "public recreation area," "unlimited public access," "conservation easement," and "easement and access" categories on 0.64 acres on parcel 329370-0530 for a current use valuation of 10% of assessed value for the enrolled portion of the property.

2. Approval should be subject to any conditions and requirements listed herein or incorporated from the DNRP staff report. Approval is also subject review and approval of the application by the City of Shoreline.

DATED June 11, 2026.

Devon Shannon
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

A party may appeal an Examiner report and recommendation by following the steps described in KCC 20.22.230. By **4:30 p.m.** on ***July 6, 2026,*** an electronic appeal statement must be sent to Clerk.Council@kingcounty.gov, to hearingexaminer@kingcounty.gov, and to the party email addresses on the front page of this report and recommendation. Please consult KCC 20.22.230 for the exact filing requirements.

If a party fails to timely file an appeal, the Council does not have jurisdiction to consider that appeal. Conversely, if the appeal requirements of KCC 20.22.230 are met, the Examiner will notify parties and interested persons and will provide information about next steps in the appeal process.

MINUTES OF THE MAY 28, 2026, HEARING ON THE APPLICATION OF GROW INC., FILE NO. E25CT019SH

Devon Shannon was the Hearing Examiner in this matter. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered by DNRP and entered into the record:

Exhibit no. 1	DNRP staff report
Exhibit no. 2	*Reserved for future submission of the affidavit of hearing publication*
Exhibit no. 3	Legal notice and introductory ordinance to the King County Council
Exhibit no. 4	Arcview/orthophotograph and aerial map
Exhibit no. 5	Application signed and notarized