

Ordinance No. 123366

Council Bill No. 110903

AN ORDINANCE relating to the City Light Department; ratifying and confirming the execution of a Settlement Agreement between the City of Seattle and Mr. Jim Younkens and Ms. Tammy Nguyen to resolve a dispute over use of City property in Skagit County and a Permit for Jim Younkens to continue using the property under certain conditions.

CF No. _____

Date Introduced:	<u>July 6, 2010</u>	
Date 1st Referred:	To:	Energy, Technology, and Civil Rights
<u>July 6, 2010</u>	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote:	
<u>8-2-10</u>	<u>9-0</u>	
Date Presented to Mayor:	Date Approved:	
<u>8-3-10</u>	<u>8/6/10</u>	
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
<u>8/6/10</u>		
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: _____

Bruce A. Hewitt³
Councilmember

Committee Action:

7/21/10 PASS BH, RC, NL

8/2/10 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

LAW DEPARTMENT

Law Dept. Review OMP Review City Clerk Review Electronic Copy Loaded Indexed

ORDINANCE 123366

1
2 AN ORDINANCE relating to the City Light Department; ratifying and confirming the execution
3 of a Settlement Agreement between the City of Seattle and Mr. Jim Younkins and Ms.
4 Tammy Nguyen to resolve a dispute over use of City property in Skagit County and a
Permit for Jim Younkins to continue using the property under certain conditions.

5 WHEREAS, in March, 1993, The City of Seattle acquired approximately 4,344 acres of vacant
6 land from the Crown Pacific Limited Partnership in Skagit County, Washington pursuant
7 to Ordinance No. 115554, to be maintained by the City Light Department as wildlife
8 mitigation lands pursuant to the settlement agreement in connection with the relicensing
of the Skagit River Hydroelectric Project; and

9 WHEREAS, around 2005, City Light became aware that Mr. Younkins had reportedly been
10 using a small and remote portion of the property without permission from the City Light
Department or from the prior owner for over 30 years; and

11 WHEREAS, after significant challenges in establishing communications with Mr. Younkins, the
12 City Light Department negotiated a settlement agreement to resolve the dispute over the
13 use of the property, which released any potential claims by Mr. Younkins or his daughter,
14 Tammy Nguyen, for adverse possession of the property and granted Mr. Younkins
permission to continue using the property under certain conditions; and

15 WHEREAS, City Light Department recommends that it is in the best interests of the City of
16 Seattle to ratify and confirm the settlement agreement and permit which will avoid the
17 expense of litigation to protect the City's ownership interest in the property; NOW,
THEREFORE,

18 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

19 Section 1. The "General Release of Claims and Settlement Agreement," dated
20 December 16, 2009, executed by Jorge Carrasco, Seattle City Light Superintendent, and Mr. Jim
21 Younkins and Tammy Nguyen, a copy of which is attached herein as Attachment 1, is hereby
22 ratified and confirmed.
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1 Section 2. The “Temporary Permit,” dated December 16, 2009, executed by Dave
2 Barber, Seattle City Light Real Estate Services Manager and Jim Younkins, a copy of which is
3 attached herein as Attachment 2, is hereby ratified and confirmed.

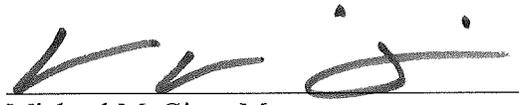
4 Section 3. This ordinance shall take effect and be in force 30 days from and after its
5 approval by the Mayor, but if not approved and returned by the Mayor within ten days after
6 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

7 Passed by the City Council the 2nd day of August, 2010, and
8 signed by me in open session in authentication of its passage this

9
10 2nd day of August, 2010.

11
12 
13 President _____ of the City Council

14 Approved by me this 6th day of August, 2010.

15
16
17 
18 Michael McGinn, Mayor

19 Filed by me this 6th day of August, 2010.

20
21 
22 City Clerk

23 (Seal)

24 Attachment 1: General Release of Claims and Settlement Agreement

25 Attachment 2: Temporary Permit

Mary Davis/md
SCL – Younkens Settlement ATT 1
May 10, 2010
Version #2

Attachment 1

General Release of Claims and Settlement Agreement

(.pdf copy of executed agreement follows)



GENERAL RELEASE OF CLAIMS
AND SETTLEMENT AGREEMENT

This General Release of Claims and Settlement Agreement ("Agreement") is by and between the City of Seattle, a Washington municipal corporation ("City"), acting through its Seattle City Light ("SCL") and Jim Younkins ("Younkins") and his daughter, Tammy Nguyen ("Daughter"), (collectively "the Parties").

RECITALS

A. The City owns a 438-acre parcel of vacant land (Tax Parcel #P51264) in Skagit County, Washington ("Property"), which was purchased in 1993 and is managed as wildlife mitigation lands under the jurisdiction of SCL as part of a settlement agreement related to SCL's license from the Federal Energy Regulation Commission ("FERC") to operate its hydroelectric dam on the Skagit River.

B. In 2006, SCL discovered that Younkins has been using a remote portion of the Property, including a narrow walking path from the "200 Road" that is approximately 6 feet wide and 0.2 miles in length on the Property and an approximately 5,000 square foot cleared area that includes a rustic log cabin, and other personal effects, the location of which are more specifically shown on the figure attached as Exhibit A ("Disputed Property").

C. Younkins claims the Disputed Property has been used at least intermittently for 30 years and more recently as his residence.

D. The City claims that Younkins' has no authorization to use the Property.

E. The Parties now wish to avoid the costs, burdens, and uncertainties of litigation and to avoid further actions between themselves and desire to enter into this Agreement to settle all claims and controversies between them that result from, relate to, or arise out of the Disputed Property.

AGREEMENT

In consideration of the promises and mutual covenants and agreements contained herein, the Parties agree as follows:

1. The Parties will do the following:
 - A. Younkins and Daughter will release any and all claims, including any adverse possession or prescriptive rights claims, now and in the future, for their selves, their heirs and assigns, that arise out of or relate to Younkins past, current and future use of the Disputed Property in accordance with this Agreement.
 - B. The City, through SCL, will grant Younkins a revocable permit without charge to continue using the Disputed Property under certain terms and conditions that are consistent with SCL's wildlife mitigation lands management policies



until Younkins stops using or abandons the Disputed Property for any reason for a period of 90 days. A copy of the permit is attached and incorporated as Exhibit B.

2. General Release. The Parties agree that there is adequate consideration for all of the promises, releases, covenants and obligations set forth in this Agreement. Younkins and Daughter hereby release and forever discharge the City and its agents, officers, directors, employees, attorneys and any and all other persons or entities who have acted on its behalf from any and all claims, demands, warranties, causes of action, obligations, damages, and any liabilities of any nature whatsoever, whether or not now known, anticipated, suspected or claimed ("Claims"), which arise out of, are based upon, or are in any way connected to the Disputed Property. To the extent any Claims arise out of or are connected to Younkins presence or use of the Disputed Property, the City hereby releases and forever discharges Daughter from any and all claims, demands, warranties, causes of action, obligations, damages, and any liabilities of any nature whatsoever, whether or not now known, anticipated, suspected or claimed.

3. No Admission of Fault. Neither the terms of this Agreement, nor any action taken under it will constitute or be construed as an admission by either Party of the validity of any of the claims or controversies or of any fault or wrongdoing on its part. Neither the execution of this Agreement, the negotiations leading to its execution, nor any action taken pursuant to its terms will be admissible for any purpose in any proceeding, except a proceeding to enforce the terms of this Agreement.

4. Costs and Attorneys' Fees. It is understood and agreed that each Party will be responsible for the payment of its own costs, attorneys' fees, and all other expenses incurred in connection with this Agreement, the permit, and all matters released herein.

5. Covenant Not to Sue. Younkins and Daughter understand and agree that they will not commence, maintain, or prosecute against the City or its agents, officers, directors, employees, attorneys or any and all other persons or entities who have acted on its behalf, any court action or other legal proceeding that is based upon any of the alleged claims, demands, causes of action, damages, liabilities, obligations, losses and expenses released in Paragraph 2 of this Agreement. Younkins and Daughter further understand and agree that they will not execute or seek to impose, collect or recover upon or otherwise enforce any judgment, warrant or attachment against the City or its agents, officers, directors, employees, attorneys or any and all other persons or entities who have acted on its behalf, on account of or arising from any such claims, demands causes of action, damages, liabilities, obligations, losses and expenses, except those arising from this Agreement, or those unrelated to the Disputed Property.

6. Indemnity and Attorneys' Fees. Should either Party breach any of the provisions of this Agreement, the breaching Party shall indemnify and hold harmless the other Party from and against all claims, causes of action, obligations, damages and liabilities, including court costs, consultants' fees, and attorneys' fees, arising from or in connection with the breach. In any litigation for the breach of or to enforce a provision of this Agreement, the prevailing party will also recover its costs, non-statutory expenses, and attorneys' fees.

7. Governing Law. This Agreement shall be construed by and enforced in accordance with the laws of the State of Washington.



8. Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the successors and assigns of the Parties, together with their agents, officers, directors, employees, attorneys and any and all other persons or entities who have acted on their behalf.

9. Authority to Execute the Agreement. The Parties represent and warrant that they have the sole right and exclusive authority to execute this Agreement and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand against the other Party relating to any matter covered by this Agreement.

10. Entire Agreement. The Parties agree that the terms of this Agreement are contractual and are not mere recitals. Each Party further declares and represents that no promise, inducement, or agreement not expressed herein has been made by the other Party to induce it to enter into this Agreement. This Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes any and all representations, promises and understandings of any kind, whether oral or written. The Parties agree that this Agreement may not be altered, amended, modified or otherwise changed except by a writing executed by each of the Parties.

11. Headings. The headings contained in this Agreement are for purposes of convenience only and shall not be deemed to affect the meaning or interpretation of any of the provisions of this Agreement.

12. Method of Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

13. Each Party. Each Party declares that prior to the execution of this Agreement, it has apprised itself of sufficient information to intelligently exercise its judgment in determining whether to execute this Agreement. Both Parties represent that they have had the opportunity to review this Agreement with counsel, at their discretion, and that this Agreement is entered into freely and voluntarily.

IN WITNESS WHEREOF, the Parties execute this Agreement and it will be in full force and effect as of the last date set forth below.



CITY OF SEATTLE:

By: Jorge Carrasco
Jorge Carrasco

Seattle City Light Superintendent

Date: 12/16/09

Jim Younkins:

By: Jim Younkins

Date: 10/9/09

Tammy Nguyen:

By: Tammy Nguyen

Date: 10/9/09

1. Exhibit A - Figure showing location of Disputed Property used by Younkins
2. Exhibit B - Permit



Mary Davis/md
SCL – Younkins Settlement EX A
May 10, 2010
Version #2

Exhibit A
to
Attachment 1

Figure Showing Location of Disputed Property Used by Younkins

(.pdf copy of figure follows)



Cabin and Trail Permit Area (T36N R6E, Sec. 13 NW 1/4 of SW 1/4)



Created 2009-06-19 by Seattle City Light, Environmental Affairs
Division. Data shown is for display purposes only and SCL
does not warrant the accuracy, reliability or completeness of this data.

	Permit Area
	Wildlife Mitigation Lands
	Permit Trail
	Sections



Mary Davis/md
SCL – Younkins Settlement ATT 2
May 10, 2010
Version #2

Attachment 2

Temporary Permit P.M. 360613-3-401

(.pdf copy of executed temporary permit follows)



CITY OF SEATTLE-CITY LIGHT DEPARTMENT

Real Estate Services (SMT 3012)
700 Fifth Avenue, Room 3300
PO Box 34023
Seattle, Washington 98124-4023

TEMPORARY PERMIT
P.M. # 360613-3-401

THIS PERMIT AGREEMENT entered into this 16th day of December, 2009 between the CITY OF SEATTLE, acting through its CITY LIGHT DEPARTMENT, hereinafter called the "City" or "City Light" and JIM YOUNKINS "Permittee" for the limited and nonexclusive use of a portion of City fee-owned real property:

The "Permit Area" is defined as a 5,000 square-foot portion of the South Fork Nooksack Wildlife Mitigation Land, Skagit County Assessor's Tax Parcel No. P51264, Township 36N, Range 6, Section 13 NW ¼ of SW ¼ ("Property") and including a 6-foot wide trail approximately 0.2 miles in length as shown on the map attached and incorporated as Exhibit A to this Permit.

PERMITTED USE

The use of the Permit Area is for the sole and limited purpose of personal use by Permittee of an existing cabin and the immediately surrounding cleared area, pedestrian access on the existing walking trail, incidental collection of wood from naturally fallen trees from the immediately surrounding area of the Permit Area, and subsistence fishing of species open to sport fishing according to current Washington Department of Fish and Wildlife regulations. For as long as Permittee is using the Permit Area, Permittee's daughter, Tammy Nguyen, may use the Permit Area to occasionally visit Permittee or to remove personal property upon termination in accordance with this Permit. No other use of the Permit Area or the Property is allowed.

This Permit and the use of the Permit Area are pursuant to a General Release of Claims and Settlement Agreement between the City and Permittee, dated Dec. 16 2009 and subject to the following terms and conditions:

TERMS AND CONDITIONS

1. The term of this Permit shall commence on December 16th 2009, and continue until such time that the Permittee does not use the Permit Area continuously for a period of 90 days, or the date that the Permit is earlier terminated in accordance with this Permit. The Permittee shall promptly notify City Light if the Permittee is no longer using the Permit Area pursuant to this paragraph to the extent practicable. City Light requests Permittee's daughter to notify City Light of same, if Permittee is unable.



2. Permittee accepts the Permit Area in an "AS-IS" condition and understands and agrees that the City purchased the South Fork Nooksack Wildlife Mitigation Land ("Property") with the express purpose to maintain it in its natural condition as fish and wildlife habitat and that the City has no obligation to improve, maintain or repair the Property or Permit Area for the Permittee's use. The City makes no representation or warranty as to the condition of the Property or Permit Area, or the suitability or fitness of the Permit Area for Permittee's use. The City is not responsible for Permittee's safety or personal property and shall not be liable for any injury to the Permittee or damage to Permittee's personal property in the Permit Area, regardless of how the injury or damage occurs. For the purposes of this Permit, personal property includes all personal effects, equipment, supplies, and improvements within the Permit Area, including the existing cabin and associated structures.

3. Upon termination of this Permit, no further use of the Permit Area by Permittee is authorized under this Permit. The Permittee shall remove all personal property from the Permit Area on or before the effective date of the termination of this Permit. If unable to do so, City Light will contact Permittee's daughter and request that she remove all personal property from the Permit Area within 30 days of the notice. If Permittee or his daughter fails to remove such personal property on or before the respective dates above, the personal property will be deemed abandoned and become the property of the City, and at the City's sole option, the City may remove or dispose of the personal property, all without liability to the Permittee or his daughter for loss, injury or damage thereto.

4. The applicable permit fees are waived pursuant to the General Release of Claims and Settlement Agreement.

5. Permittee's use of the Permit Area shall comply with all applicable local, state and federal laws, regulations, or permits, including any regulations related to fish and wildlife.

6. The Permittee's use of the Permit Area shall at no time interfere with or hinder City Light's activities, operations, access to, or ownership rights of the Property.

7. The Permittee shall not do any of the following:

- a. Drive motor vehicles off of established logging or forest roads on the Property.
- b. Post any signs on the Property or within the Permit Area, except a reasonable and lawful sign on the existing cabin to inform others that the cabin is used exclusively by Permittee.
- c. Place any new buildings, structures or improvements within the Permit Area.
- d. Engage in any illegal activities in the Permit Area, including possession of illegal firearms or substances.
- e. Make any alterations or additions to any existing buildings, structures or improvements within the Permit Area.
- f. Pave, grade, cut, or fill within the Permit Area.
- g. Cut or clear trees or vegetation except as expressly permitted under the Permitted Use section of this Permit or to keep the existing trail and perimeter around the cabin clear for the permitted use.
- h. Store, dump, bury or transfer any hazardous substances, flammable materials, inoperable vehicles, chemicals, oil, fuels or containers for any such substances, chemicals, oils.



fuels, etc., within the Permit Area, except the small quantities (less than 5 gallons) of fuels for personal use.

8. Permittee has the sole responsibility to maintain and repair the personal property within the Permit Area, including the existing cabin, at his sole cost and expense.

9. This Permit is for the limited use of the Permit Area only and shall not be construed to replace or to be used in lieu of any permits or licenses which may be required, granted or supervised by any other subdivision of government charged with licensing, policing and supervising any activities of the Permittee.

10. Permittee agrees to indemnify and hold harmless the City of Seattle from all claims, actions or damages of every kind and description, including all claims, actions or damages brought by Permittee's employees, agents, representatives or invitees, which may accrue from or be suffered by reason of Permittee's use of the Permit Area.

In case of any suit of action brought against the City arising out of or by reason of any of the above causes, the Permittee shall, upon notice to Permittee of commencement of such action, defend the same at no cost or expense to the City. The Permittee will fully satisfy any judgment rendered in said action adversely to the City, except to the extent of the negligence or willful misconduct of the City, its agents or representatives.

11. In the event the Permittee is found to have violated any local, state, or federal rules or regulations, or the conditions of this Permit, Permittee will have the sole responsibility to pay any and all fines, fees, claims, assessments or penalties that may be assessed against the Permittee or City Light because of the Permittee's use of the Permit Area.

12. In the event the Permittee violates or breaches any term or condition of this Permit, the City shall have the right to immediately terminate this Permit without liability for loss or damage to the Permittee; and upon termination of this Permit, the Permittee will vacate the Permit Area and remove the personal property in accordance with the terms of this Permit.

13. All of the indemnification and hold harmless provisions of this Permit shall survive the termination of the Permit.

14. This Permit is not transferable or assignable, in whole or in part, and the Permittee does not have any rights to grant use of the Permit Area to any other persons.



15. Permittee agrees that Permittee's daughter, Tammy Nguyen, will serve as the Permittee's contact for any notices or information that City Light must send to administer or enforce this Permit, which will be at the address below, or as changed by notice in writing to City Light from time to time, which will be deemed received by Permittee in recognition that Permittee does not have a regular contact address or telephone.

10827 SE 180th Ave
Address and Phone
RENTON, WA 98075
(253) 430-0057

GRANTED this 16th day of December, 2009

APPROVED:

SEATTLE CITY LIGHT:
REAL ESTATE SERVICES

David L. Barber
David Barber, Manager
Real Estate Services Division

ACCEPTED:

PERMITTEE:

Jim Younkins
Jim Younkins

Seattle City Light
700 5th Avenue, Suite 3300
P.O. Box 34023
Seattle, WA 98124-4023



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
City Light Department	Ron Tressler / 386-4506	Calvin Chow / 684-4652

Legislation Title:

AN ORDINANCE relating to the City Light Department; ratifying and confirming the execution of a Settlement Agreement between the City of Seattle and Mr. Jim Younkins and Ms. Tammy Nguyen to resolve a dispute over use of City property in Skagit County and a Permit for Jim Younkins to continue using the property under certain conditions.

- **Summary of the Legislation:** This ordinance will ratify and confirm the execution of a Settlement Agreement between the City of Seattle and Mr. Jim Younkins and his daughter, Ms. Tammy Nguyen, to resolve a dispute over use of City property in Skagit County and also a Temporary Permit for Mr. Younkins to continue using the property under certain conditions.
- **Background:** In 1993, the City Light Department acquired approximately 4,344 acres of vacant forest land from the Crown Pacific Limited Partnership in Skagit County, Washington, for wildlife mitigation lands in connection with the relicensing settlement for the Skagit River Hydroelectric Project. This land acquisition was authorized by Ordinance No. 115554.

In about 2005, City Light became aware that Mr. Jim Younkins had reportedly been using a small and remote portion of one of the acquired parcels without permission from City Light or from the prior owner for over 30 years. On advice from the Law Department, City Light negotiated a settlement agreement which released any potential claims by Mr. Younkins or his daughter, Tammy Nguyen, for adverse possession of the property. In conjunction with this settlement agreement, a Temporary Permit was granted to Mr. Younkins to allow him continued use of the property subject to several conditions.

X **This legislation does not have any financial implications.**

Attachments:

See Exhibit A to Attachment 1 to Ordinance: Map – Cabin and Trail Permit Area





City of Seattle
Office of the Mayor

June 22, 2010

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am transmitting the attached proposed Council Bill that will ratify and confirm the execution of a settlement agreement between the City of Seattle and Mr. Jim Younkings and his daughter, Ms. Tammy Nguyen, to resolve a dispute over the use of City property in Skagit County and a permit to allow Mr. Younkings' continued use of the property subject to several conditions.

This action releases the City from potential claims by Mr. Younkings or Ms. Nguyen for adverse possession of a small portion of property that the City acquired for wildlife mitigation in 1993 in connection with the relicensing of the Skagit River Hydroelectric Project. This settlement agreement and associated permit will avoid the expense of litigation to protect the City's ownership interests in this property.

Thank you for your consideration of this legislation. Should you have questions, please contact Lynn Best, Seattle City Light Environmental Affairs, at 206-684-3328.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McGinn".

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

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