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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CAROLINE C. FOWELL,

Defendant.

) No. VN F3793628; F3793630 PMP

)
)
) NOTICE OF DISMISSAL
) WITHOUT PREJUDICE TO
) CITATIONS F3793628 and
) F3793630
)
)
)

Pursuant to Fed. R. Crim. P. 48 (a), the United States requests leave to dismiss without prejudice citations F3793628 and F3793630, which are scheduled for trial in Juneau, on May 17, 2007 at 1:30 pm.

Although prepared to proceed to trial, the government is seeking the court's

leave to dismiss these citations without prejudice in order to give the defendant, Caroline Powell, a final, clearly defined, and limited opportunity to come into compliance with United States Forest Service regulations.

These citations arose from the defendant's construction of a cabin on Eleanor Island in Yakutat, Alaska. On April 2, 2001, the defendant was issued a Special Use Authorization (SUA) to build and maintain a 500 square foot cabin no higher than 16 feet as part of a temporary fish camp. This SUA was valid for a limited time, until December 31, 2004. As provided for in the SUA signed by the defendant, when the SUA expired either a new SUA must be applied for and issued for the cabin to remain authorized, or the SUA holder must provide an abandonment plan for the SUA site within a reasonable time following the expiration of the SUA and the improvements must be removed.

The SUA also provides for the consequences if these procedures are not followed:

If the holder [of the SUA] fails to remove improvements or restore the site within the prescribed time period they [the improvements] become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

The bases for citations F3793628 and F3793630 are that 1) the cabin on

Eleanor Island at the site previously authorized to Caroline Powell did not conform to size requirements provided by the SUA, and 2) the cabin currently remains at the SUA site past the expiration of the SUA in December 2004. The U.S. Forest Service has provided numerous opportunities for Caroline Powell and Larry Powell to make their cabin compliant with the original SUA. The Powells have failed to do so. The SUA for the cabin expired in December 2004. The SUA has not been renewed. Thus, the cabin is not authorized at this time to remain on U.S. Forest Service System lands and is currently in trespass.

The defendant, Carline Powell, and her husband, Larry Powell, are hereby on notice that they have until June 8, 2007, to submit a plan for removal of the cabin and all personal property from National Forest System lands to include restoration of the site on Eleanor Island to pre-construction conditions. The plan is to be submitted to the Yakutat District Ranger for approval. The plan shall specify that removal and restoration is to be complete by October 1, 2007, and the removal and restoration should in fact be complete by that date. Should either of these deadlines be missed the government will follow the procedures for removal set out in the SUA and quoted here, and issue Class B misdemeanor citations related to the ongoing trespass that exists at this time.

CONCLUSION

The government hereby provides notice to Caroline Powell and Larry

Powell of the following:

- **June 1, 2007** is the deadline for providing a removal and restoration plan to the U.S. Forest Service, Yakutat District Ranger for the cabin on Eleanor Island.
- **October 1, 2007** is the deadline for removal and restoration of the cabin on Eleanor Island.

If Caroline Powell and Larry Powell miss either of these deadlines they will be cited with Class B misdemeanors relating to the ongoing trespass of their cabin.

Additionally, as provided for in the original SUA signed by the defendant, if the Powells fail to remove and restore the site where the cabin is now located by October 1, 2007, the cabin and any other improvements will become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States, and Caroline Powell and Larry Powell shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

The government therefore requests, pursuant to Fed. R. Crim. P. 48(a),

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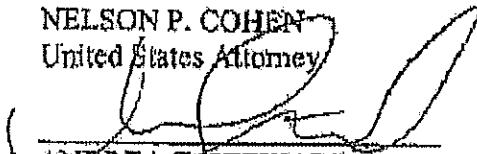
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leave of the court to dismiss these citations, F3793628 and F3793630, without prejudice.

RESPECTFULLY SUBMITTED on May 17, 2007

NELSON P. COHEN
United States Attorney



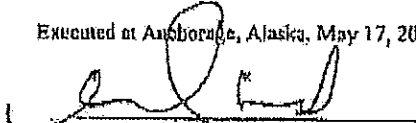
ANDREA T. STEWARD
Assistant United States Attorney

I declare under penalty of perjury that a true and correct copy of MOTION TO DISMISS CITATIONS was sent on May 17, 2007, via electronic mail to:

John Hedland, attorney for Caroline Powell

Hand delivery to :
Caroline Powell and Larry Powell

Executed at Anchorage, Alaska, May 17, 2007



Office of the U.S. Attorney