

# Friends of Merrymeeting Bay

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## Filed Electronically and Hard Copy

Jay Clement  
Maine Project Office  
US Army Corps of Engineers  
675 Western Ave.  
Augusta, ME 04351  
623-8367

August 3, 2010

Re: NAE-2008-03017, Maine Power Reliability Project

Jay,

It is our understanding that your office has recently issued 404 permits to CMP and or related entities for the MPRP. It is unclear to us how the ACE has resolved issues FOMB, Grid Solar, and the Sierra Club raised in earlier correspondence regarding more environmentally benign alternatives.

As you know, pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, before issuing permits for the discharges of dredged and fill materials at specified disposal sites, the Corps must insure that the proposed action complies with the strict mandate in its Guidelines: Section CFR 40 Part 230 §404(b)(1), § 230.10(a):

*“No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”*

In the current situation, there are plenty of non-transmission alternatives (NTA) to increase the projects stated goal of reliability. These include such things as demand response, distributed generation, efficiency measures, conservation, use of green renewables or hybrid solutions including these and other methods. MPRP is not a transmission project according to CMP, it is a reliability project. Reliability is categorically not a water dependant activity so the Corps must first determine if there exists the possibility of NTA's that are not water dependant.

Section 230.10(3) states when an activity does not require access to or siting within an aquatic area to “fulfill its basic purpose (i.e. is not water dependent), practicable alternatives that do not involve special aquatic sites are presumed to be available unless clearly demonstrated otherwise.” The Corps cannot issue a §404 permit unless it can

independently verify there exist no practicable alternatives. The burden is on the applicant to provide detailed, clear and convincing evidence *proving* that an alternative with less adverse impact is “impracticable” (40 C.F.R. §230.10(a)).

Please send FOMB a copy of TRC 404 permit applications and please send us an electronic and hard copy of your permit approval decision which includes a detailing of the basis for it.

If you have any further questions, please feel free to contact me. Thank you.

Sincerely,

Ed Friedman, Chair  
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C.C.  
Rand Stowell  
David Nicholas, Esq.

P.S.

Jay, I have just phoned and learned you are on vacation for 2 weeks. I spoke with Frank DelGiudice at your regional office in MA and he suggested because of the file size, you and I speak when you return and attempt to parse down what I require. Please send me an email when are back in the office. Thanks-Ed