

STATE OF MAINE  
LAND USE REGULATION COMMISSION

IN THE MATTER OF DEVELOPMENT	)	Pre-Filed Rebuttal Testimony of
APPLICATION DP 4889	)	Jeffrey T. Selser
CHAMPLAIN WIND, LLC	)	on behalf of Champlain Wind, LLC
BOWERS WIND PROJECT	)	

On behalf of Champlain Wind, LLC (“Champlain”), Jeffrey T. Selser is submitting this pre-filed rebuttal testimony in support of DP 4889 for the Bowers Wind Project (the “Project” or the “Bowers Wind Project”) and in response to pre-filed direct testimony submitted by the Partnership for the Preservation of the Downeast Lakes Watershed, Fletcher Mountain Outfitters, and Grand Lakes Stream Guides Association (collectively, the “Intervenors”).

**I. QUALIFICATIONS AND BACKGROUND**

Presently, I am a partner at the law firm of Verrill Dana, LLP in Portland, Maine. I have been an attorney with Verrill Dana since 2004, and for much of that time have served as Chair of the firm’s Timberlands Practice Group. In this capacity, I have received national recognition on numerous occasions for my work in the timberland and conservation fields. From 2000 to 2004, I was affiliated with the law firm of Perkins Thompson Hinckley & Keddy, P.A., also in Portland. Prior to that, I was affiliated with the law firm of Gruber & Associates in Bethesda, Maryland; Associated Professionals, Inc. in Rockville, Maryland; and Marriott International, Inc. in Bethesda, Maryland. I hold a Juris Doctor from the University of Richmond and a Bachelor of Science from Old Dominion University.

My work as an attorney almost exclusively is devoted to natural resource-related law, including timberland, conservation, real estate, and environmental practices. I have been very active in matters before the Land Use Regulation Commission (“LURC”), and have appeared as an expert witness and a panelist before LURC on several occasions. I frequently represent

clients on conservation and forestland policy issues, including intense negotiations of conservation easement and fee sale transactions involving a multitude of funding sources such as the Federal Forest Legacy Program and the Land for Maine's Future Program. I have represented clients in connection with many of the largest forestland transactions in the history of the United States, and have worked on several of the country's largest and highest priority conservation easements. To date, my work in the forestland and conservation fields has involved land in 27 states and three Latin American Countries.

Additionally, I am a frequent and long-time user of Maine's vast recreational resources. I have hiked many of the state's trails and mountains, paddled and fished many of its lakes and rivers, and camped in many of its campgrounds and backcountry areas. As a result, I have a broad, first-hand familiarity with much of the land and resources both in and outside of LURC's jurisdiction.

## **II. REBUTTAL TO TESTIMONY OF INTERVENORS**

In their testimony, the Intervenors rightfully identify the significance of the vast Downeast Lakes Region – including that portion of the region within the Downeast Lakes Forestry Partnership's conservation project (the "DLFP Project"). Unquestionably, it is an area that provides great economic, ecologic, and recreational benefit. That being so, however, I believe the Intervenors have mischaracterized how the Bowers Wind Project fits into the Downeast Lakes Region, as a whole; the relationship of the Bowers Wind Project to the West Grand Lake Community Forest component of the DLFP (the "WGLCF Project") specifically; the nature of the WGLCF Project vis-à-vis federal conservation policy; and the nature of certain recreational resources likely to be affected by the Bowers Wind Project. My comments are

intended to provide background and other additional information in an effort to add clarity to many of the statements made by the Intervenors in their testimony.

**A. RELATIONSHIP OF BOWERS PROJECT TO RECREATIONAL RESOURCES OF THE AREA**

In their testimony, the Intervenors characterize the 8-mile study area around the Bowers Wind Project as being “the heart” of the Downeast lakes. See pre-filed direct testimony of Andrew Buckman at 6, 7. In support of this characterization, Intervenor Andrew Buckman cites extensively to the Appalachian Mountain Club’s *Quiet Water Canoe Guide: Maine* (1995 edition), asserting that this publication lists the most popular canoe routes of the region, and that each of these routes passes through some part of the lakes or portions of lakes within the 8-mile study area. A review of the updated 2005 edition of the AMC guide (*Quiet Water Maine Canoe & Kayak Guide, 2<sup>nd</sup> Edition (the “2005 Guide”)*) reveals a somewhat different picture. Of the 25 quiet water trips in the Downeast region listed in this guide, only two lie within or partially within the 8-mile study area. The remaining 23 trips are well outside the 8-mile area, do not pass through any part of any of the lakes mentioned by Buckman, and lie primarily to the south of the Bowers Wind Project.

Buckman identifies one canoe trip, in particular, as being potentially irreparably damaged by the Bowers Wind Project. As Buckman notes, the AMC guide lists the Pocumcus/Junior/Sysladobsis loop trip as “one of the best extended quiet water loop trips in the state.” 2005 Guide at 142. What Buckman fails to mention is that this trip begins and ends well beyond the 8-mile study area, that the vast majority of the trip is outside of the 8-mile study area, and that the trip is most often paddled north through Pocumcus and Junior Lakes, through the heavily-developed Bottle Lake, and then south through Sysladobsis Lake back to Pocumcus. Thus, the portion of the trip closest to the Bowers Wind Project also is the most heavily developed portion

of the trip – a section the AMC guide describes as “the kind of place we prefer to paddle through as quickly as possible.” 2005 Guide at 145. Once passing this section, the trip then turns south, away from the Bowers Wind Project, and the remainder of the trip would be paddled with the turbines *behind* the paddler/viewer.

## **B. THE WGLCF AND DLFP PROJECTS**

In their testimony, the Intervenor frequently cite to the conservation efforts in the region generally, as well as the WGLCF Project specifically, as evidence that the Bowers Project is incompatible with existing land uses. See e.g. pre-filed direct testimony of Kevin Gurall. Their testimony is incomplete or, misleading, for several reasons. First, they mischaracterize the location of the WGLCF Project vis-à-vis the Bowers Project. Second, they repeatedly characterize the WGLCF Project as being “ranked by the U.S.F.S. Forest Legacy Program as the Number One Conservation Project *in the entire nation*,” (pre-filed direct testimony of David Tobey at 3), the “current #1 priority forest conservation project” (Grand Lake Stream Guides Association (“GLSGA”) at 2), or the “#1 forest conservation priority” (Kevin Gurall at 7). These characterizations are misleading, and do not accurately reflect the priority ranking of the WGLCF Project within the Forest Legacy Program. Third, the Intervenor rely on the existence of conserved lands as a basis for restricting land development nearby. In doing so, they misrepresent both the purpose and significance of the governing conservation easements. Additionally, if successful, their arguments would have a chilling effect on future conservation efforts.

### **1. The Location of the WGLCF and DLFP Projects**

The WGLCF Project is part of a significant conservation effort involving a mixture of easements, fee acquisitions, management plans, and other measures, ultimately conserving nearly

400,000 acres of forestland, including a 500-foot-wide corridor along fifty miles of Spednic Lake and the St. Croix River (this corridor is now owned by the State of Maine), a 312,000-acre working forest conservation easement extending over lands south and east of the Bowers Wind Project (the Sunrise Conservation Easement held by the New England Forestry Foundation), and more than 33,000 acres of fee purchases owned by the Down East Lakes Land Trust. The Sunrise Conservation Easement is the closest conserved land to the Bowers Wind Project and NEFF as the easement holder supported adding land in Kossuth to the expedited permitting area and has specifically stated that it does not object to the Project. The map attached as Exhibit A shows the entirety of the DLFP Project, including the WGLCF Project cited by the Intervenors in their testimony.

The primary goals of the DLFP Project were – and remain – to support the continued use of the area as a working forest, to conserve and enhance wildlife habitats, to maintain an undeveloped shoreline, and to protect historic public recreation. The project protects significant loon and eagle nesting areas, more than 445 miles of shoreland on 60 lakes, and 1,500 miles of riverfront. It is also part of a block of more than 1.3 million contiguous acres of protected lands along and near the Maine-New Brunswick Border. As shown on Exhibit A, *the Bowers Wind Project sits outside this vast expanse of protected lakes, rivers, streams and forests, and the 8-mile study area includes only the very periphery of this vast expanse of conserved land.*

The pending WGLCF Project consists of approximately 22,000 acres of land owned in fee by Lyme Forest Fund and managed by The Lyme Timber Company. The DLLT holds an option to acquire two working forest conservation easements on the land, and is in the process of raising the remaining funds necessary to purchase these easements. The easements will ensure that the property remains available for sustainable commercial forestry while also protecting the

shorelines and forests from development and guaranteeing public access for recreation. The WGLCF Project includes undeveloped shoreline on West Grand Lake, Lower Oxbrook Lake, and Big Lake, and, as is apparent from Exhibit A, represents the final remaining piece of the larger DLFP Project. However, it is not accurate to state, as the Intervenors do, that the WGLCF Project “lies directly in the shadows of the proposed Bowers Mt, [sic] project.” See GLSGA at 1. *In fact, no portion of the WGLCF Project will be within 8 miles of the Bowers Wind Project, the great bulk of the WGLCF Project lies 15-20 miles away, it does not include any of the lakes within the Bowers Project study area, and it does not result in any extension of the conserved lands toward the Bowers Project.*

2. Priority Designation of the WGLCF Project

In arguing that the Bowers Project would be an incompatible use with the WGLCF Project, the Intervenors mischaracterize the nature of the WGLCF Project’s priority ranking within the federal Forest Legacy Program. The purposes of the Forest Legacy Program are “ascertaining and protecting environmentally important forest areas that are threatened by conversion to nonforest uses and...promoting forest land protection and other conservation opportunities.” 16 U.S.C. 2103C. The program employs various scoring criteria to determine eligibility and funding priority for forestland conservation projects, and the WGLCF Project presently is ranked first in priority for funding using fiscal year 2011 Forest Legacy dollars. As discussed below, however, this is not the same as being the “Number One Conservation Project in the entire nation” or even the “#1 forest conservation priority.”

Projects are initially selected for consideration for Forest Legacy Program funding through state administering agencies (in Maine that agency is the Bureau of Parks and Lands), and each state develops its own list of priorities under the Forest Legacy Program for submission

to the U.S. Forest Service. The final funding priority, however, is determined by the U.S. Forest Service on an annual basis (funds are allocated annually during the congressional budget process). The final funding priority for each fiscal year is based upon three national core criteria: Important; Threatened; and Strategic. “Important” refers to the level of public benefits gained from the protection and management of the property, including ecological, economic, and social aspects. “Threatened” refers to how imminent is the threat that the subject property will be converted to nonforest uses. “Strategic” refers to how the project fits within a larger conservation plan and enhances previous conservation investments (infill projects receive the highest marks for this criterion). Also of critical importance in the funding priority rankings are project readiness and other considerations such as the amount of matching non-federal funds, ongoing stewardship endowment possibilities, and the potential for the project to generate revenues through timber harvesting or recreational access fees.<sup>1</sup>

Forest Legacy Program regulations require that, in most cases, Program funds be spent within two years of allocation. Because of this, and the often lengthy process involved in implementing a Forest Legacy project, proposals that are at the end of the implementation process receive an additional scoring bump at the final federal review stage. As a result, many projects can climb well up the funding priority list based upon the project-readiness criterion, alone. This bump has nothing to do with conservation values and everything to do with speed of completion.

---

<sup>1</sup> Each state makes the initial scoring determination in each criterion, based upon that state’s *Assessment of Need* document. In Maine, a maximum of 110 points are awarded to potential Forest Legacy projects. This 110 points is divided as follows: a maximum of 30 points for the Importance criteria, a maximum of 20 points for the Threatened criterion, a maximum of 30 points for the Strategic criterion, and a maximum of 30 additional points for project readiness and other considerations.

It is also important to note that the Forest Legacy Program is just one of many federal grant programs for conservation. Other grant programs such as the National Resources Conservation Service's Grassland Reserve Program, the National Park Service's Land & Water Conservation Fund, the National Oceanic and Atmospheric Administration's Coastal and Estuarine Land Conservation Program, and the US Fish and Wildlife Service's National Coastal Wetlands Conservation Grant Program, all have their own funding priorities and conservation goals. In addition, there are myriad state and local programs, as well as privately-funded conservation efforts all across the country. While the WGLCF Project may occupy the top spot for 2011 fiscal year funding through the Forest Legacy Program, it is misleading, at best, to say that the project is the "Number One Conservation Project in the entire nation."

The WGLCF Project is the final piece of the DLFP Project, and represents the true heart of that conservation effort. It is the classic case of an infill project, and it completes a 1.3 million-acre contiguous tract of protected land. As such, the WGLCF Project received very high points under the Strategic criterion. Because the WGLCF Project will remain a working forest, it also received high marks for economic benefits from timber production. Finally, the project is in a very late stage of project readiness. The easement rights have been secured through an option with the landowner, the easement terms are fully negotiated, and an interim agreement exists regarding public access and other components during the option period. All that remains is for the matching acquisition funds (the size of which also resulted in a scoring bump) to be raised. That effort is well underway, and is expected to be completed in 2012. Simply put, the WGLCF Project's first priority funding position is as much a function of its non-conservation attributes as anything else.



#### **D. SIGNIFICANCE OF LANDS OUTSIDE THE CONSERVED AREA**

The acquisition of the WGLCF Project's conservation easement represents the final piece of the truly landscape-scale conservation effort that is the DLFP Project. Notable in this is that the DLFP Project does not identify any areas outside of the presently-existing project boundaries as requiring further protection. This is consistent with long-standing conservation practice in Maine and the United States – that conservation projects (conservation easements, in particular) are limited to the lands encumbered by the projects. To subject land outside the project boundaries to regulatory restrictions based upon adjacency to the area encumbered by the project – in this case the so-called Sunrise Conservation Easement – would have a chilling effect on future conservation efforts. I know from first-hand experience that Landowners will be less willing to grant conservation easements or conduct conservation sales if doing so will result in de facto loss of value on neighboring lands. In addition, state agencies and conservation organizations seeking to acquire easements and other protections will be forced to pay higher per-acre costs to account for the potential loss of value to land outside the project boundaries.

It is for this reason that the Forest Legacy Program specifically contemplates including important viewsheds within easement boundaries (with a corresponding payment to the landowner for the loss of value), rather than leaving those viewsheds outside of the protected areas. It is also for this reason that the Forest Legacy Program specifically makes accommodations for carving out areas appropriate for wind power production and other nonforestry uses. In fact, the *Assessment of Need* for Maine Forest Legacy projects states quite clearly that:


Maine's Forest Legacy Program, insofar as it frequently employs the use of conservation easements to protect vast landscape-scale working forest, aspires not to disrupt, impede or unintentionally distort other economic functions that might be best served by that vast acreage....Examples include communications

facilities, transmission lines, gravel extraction for local benefit or for woods road benefit, and renewable energy generation.” [Maine Forest Legacy Program Assessment of Need, June 2010, p. 17].

Maine’s *Assessment of Need* also provides that “carve-outs” of these areas from the project boundaries is a successful tool to bridge the gap between Maine’s policies and strict application of federal funding requirements. This often leads to Forest Legacy Program projects sharing borders with nonforestry uses – an arrangement that is fully contemplated by, and in compliance with, the Forest Legacy Program.

Denying otherwise permissible uses on land outside conservation project boundaries based upon adjacency to the conservation project would be directly contrary to the policies of Maine’s implementation of the Forest Legacy Program, and would cast a pall on the willingness of landowners to participate in these important conservation projects in the future. Because the funding sources for these projects all require willing landowner participation, many future projects would be impossible or greatly impaired if this dangerous precedent were established.

Date: JUNE 17, 2011


  
Jeffrey T. Selser

STATE OF MAINE  
County of Cumberland

Date: June 17, 2011

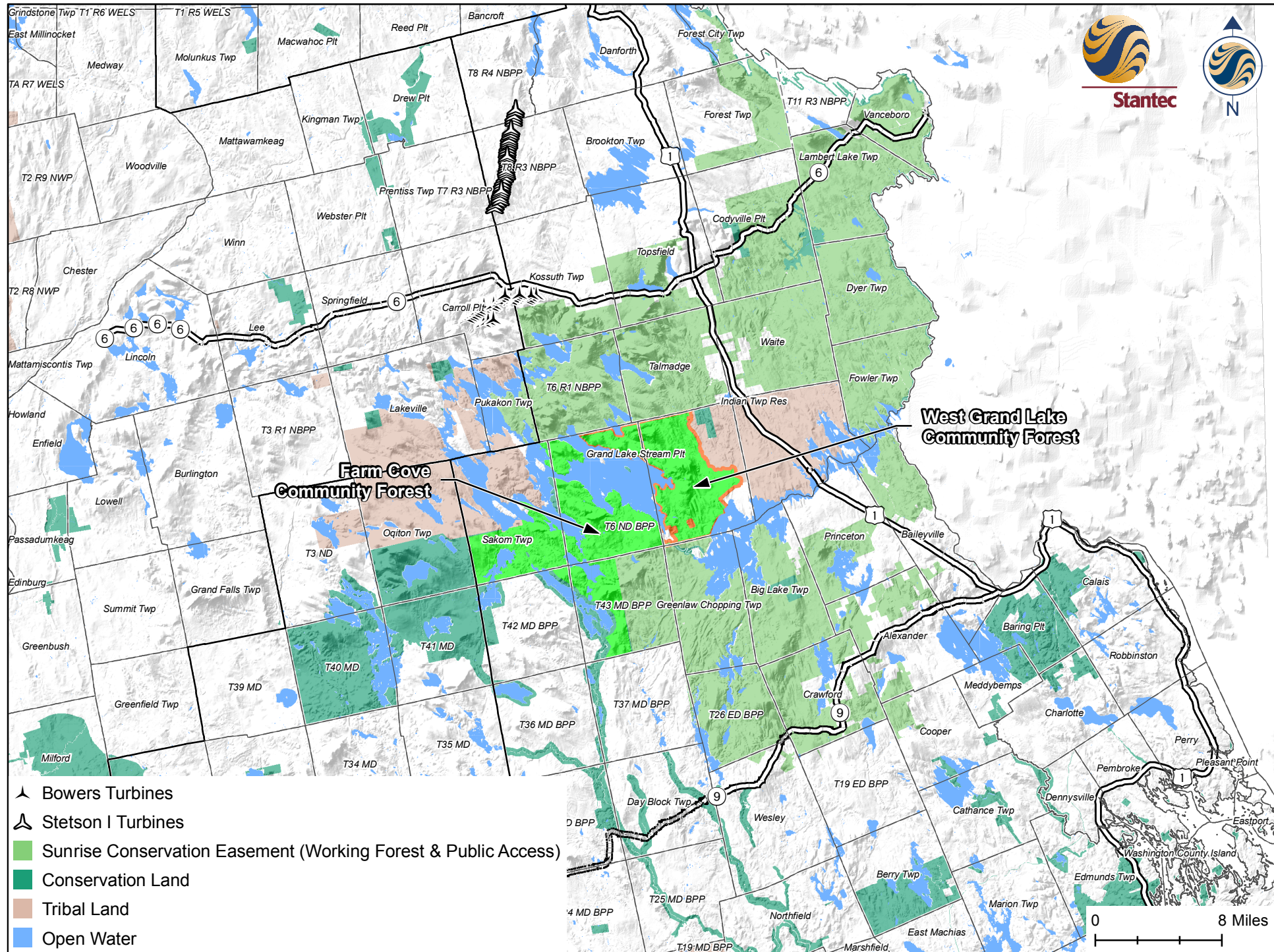
Personally appeared before me the above named Jeffrey T. Selser, who, being duly sworn, did testify that the foregoing testimony was true and correct to the best of his knowledge and belief.

Before me,

  
Notary Public  
My commission expires: July 18, 2013







MARY H. WIERZBICKI  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES JULY 18, 2013

3389326\_1.DOC



**Farm Cove Community Forest**

**West Grand Lake Community Forest**

-  Bowers Turbines
-  Stetson I Turbines
-  Sunrise Conservation Easement (Working Forest & Public Access)
-  Conservation Land
-  Tribal Land
-  Open Water

