

**RESOLUTION NO. Z-14-XX OF  
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS  
ADOPTED AT THE HEARING OF MARCH 27, 2014 CONCERNING  
CONDITIONAL USE PERMIT, PLN-2013-00013**

**WHEREAS** SAND HILL WIND, LLC filed an application for CONDITIONAL USE PERMIT, PLN2013-00013, to allow replacement of 73 existing wind turbines with 40 shrouded wind turbines, on seven parcels in three separate areas: three Western parcels north of I-580 on both sides of Altamont Pass Road and about a mile west of Grant Line Road (Assessor Parcel Numbers 99B-7750-6-0, 99B-6325-1-3, and 99B-7375-1-7); two Northeast parcels east of Mountain House Road about a mile north of I-580 (99B-7500-3-1 and 99B-7600-1-1) and two Southeast parcels east of North Midway Road about a mile south of I-580 (99B-7875-1-2 and 99B-7875-1-3); and

**WHEREAS** the Applicant, Sand Hill Wind, LLC is an operating subsidiary of Ogin, Inc. (formerly FloDesign Wind Turbine Corporation, until November 2013), which in 2012 acquired the assets of Seawest Power Resources, that held five conditional use permits approved by the Alameda County Board of Supervisors on September 22, 2005 by its Resolution R-2005-453 for the operation of existing wind farm facilities within the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), approved as follows:

C-8161, Seawest Power Resources LLC/Pombo (2.89 megawatt windfarm of 38 turbines, APN: 099B-7750-006-00);

C-8201, Seawest Power Resources, LLC/Griffith & Brockman, (3.38 megawatt windfarm of 52 turbines, APNs: 099B-7875-001-02, 099B-7875-001-03)

C-8203, Seawest Power Resources, LLC/Arnaudo & Castello (8.52-megawatt windfarm of 131 turbines, APNs: 099B-7500-003-01, 099B-7600-001-01);

C-8023 Seawest Power Resources, LLC/Johnston (2.4-megawatt windfarm of 30 turbines, APN: 099B-6325-001-04); and

C-8182 Seawest Power Resources, LLC/Ralph Properties II (8.23 megawatt windfarm of 182 turbines, APNs: 099B-6325-001-03, 99B-7375-001-07).

**WHEREAS** the subject application is a request to install 40 shrouded wind turbines (the proprietary technology of Ogin, Inc.), which consist of some generally conventional turbine components of a foundation, tower, nacelle containing an electrical generator, and a wind rotor of three blades, but distinguished by having its rotors surrounded by an inner and an outer shroud that serve to improve turbine efficiency but also have the potential to substantially reduce avian mortality, especially raptor species; and

**WHEREAS** the Applicant coordinated with the California Energy Commission (CEC) to develop an Avian Validation Study to study and compare bird behavior, turbine interaction and mortality rates between existing and shrouded turbines, using a Before-After-Control-Impact (BACI) methodology, over a three-year period begun in 2012 and primarily funded by a

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Public Interest Energy Research (PIER) Grant from the (CEC), and which will substantially rely on observation of the installed 40 shrouded turbines referred to as the Initial Repower, while also observing existing turbines on sites that have been recognized as having high risk to raptor species; and

**WHEREAS** the 40 proposed shrouded turbines would only be installed as part of the Initial Repower and the Avian Validation Study on seven of the eight parcels with existing turbines and turbine sites, including all but the Johnston property (APN 099B-6325-001-04); and

**WHEREAS** the subject application to implement the Initial Repower and replace 73 of the 433 existing turbines and turbine sites would be the first phase of a two-phase program proposed by the Applicant to repower (i.e., replace electrical power generating facilities known widely as wind farms) all of the wind farm facilities on the subject properties, and that decisions on how and when to implement the second phase, referred to as the Full Repower, to repower the remaining 360 turbines and turbine sites, including the Johnston property, will depend substantially on the results of the Avian Validation Study; and

**WHEREAS** the 360 remaining turbines and turbine sites, not replaced by the Initial Repower, would remain in use subject to the provisions of the conditional use permits approved in 2005 and as modified by subsequent permit modifications in 2007 under the Board of Supervisors' Resolution R-2007-111, until such time as the Full Repower is proposed and approved as a separate conditional use permit application; and

**WHEREAS** the approval on September 22, 2005 by the Alameda County Board of Supervisors of its Resolution R-2005-453, on appeal of the East County Board of Zoning Adjustments decisions on November 13, 2003 and January 29, 2004 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including the five CUPs issued to SeaWest Power Resources, LLC and now held by Ogin, Inc. and its operating subsidiary Forebay Wind, LLC, were approved with findings that the CUPs, including those CUPs listed above, were exempt from the California Environmental Quality Act (CEQA) as existing facilities with no substantial changes or expansion of uses; and

**WHEREAS** the Board did hold a public hearing on said application at the hour of 1:30 p.m. on the 27<sup>th</sup> day of March, 2014, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

**WHEREAS** it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

**WHEREAS** this application has been reviewed in accordance with the provisions of the California Environmental Quality Act and it was determined that the proposal, together with both the Initial and the Full Repower, would result in potentially significant adverse environmental impacts and therefore be a project subject to the California Environmental Quality

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Act (CEQA), and that preparation of an Environmental Impact Report (EIR) would be required; and

**WHEREAS**, a Draft EIR was completed on November 8, 2013 that evaluated the Initial Repower on a project-specific level, and evaluated the Full Repower on a programmatic level due to lack of site-specific information required to fully assess the environmental effects of the Full Repower and which may change based on the results of the Avian Validation Study; and

**WHEREAS** a Final EIR was completed on March 12, 2014, that together with the Draft EIR indicate that the Initial Repower would result in significant and unavoidable adverse impacts on avian wildlife species including golden eagle and other focal raptor species, as described in the separate Resolution Z-14-XX adopted by the Board on March 27, 2014, which addresses only the Initial Repower as a distinct project; and

**WHEREAS**, the Planning Department submitted a Staff Report to the East County Board of Zoning Adjustments summarizing the facts and circumstances of the Initial Repower Project, with background information regarding the Full Repower and the role of the Avian Validation Study and additional monitoring that may be required before an application is prepared for the Full Repower, and has prepared a separate Draft Resolution to certify that the Final EIR has been completed in compliance with CEQA, that the Planning Department has presented the Final EIR to the East County Board of Zoning Adjustments as the decision-making body with responsibility both for certifying the EIR as in compliance with CEQA and for approving the CUP application; and

**WHEREAS**, Resolution Z-14-XX incorporates Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations), each of which are required by State and Local CEQA Guidelines; and

**WHEREAS**, East County Board of Zoning Adjustments has determined that approval of the project as conditioned herein, including the implementation of the Mitigation Monitoring and Reporting Program attached to Resolution Z-14-XX as Exhibit B would provide for all of the significant effects on the environment to have been eliminated or substantially lessened where feasible, as indicated in the Written Findings of Significant Effects attached to Resolution Z-14-XX as Exhibit A, and that there are remaining significant effects on the environment found to be unavoidable which are acceptable due to overriding concerns as indicated in the Statement of Overriding Considerations attached to Resolution Z-14-XX as Exhibit C; and

**WHEREAS**, adoption of the programs, requirements, procedures, legal and financial commitments and all other specifications as set forth in the conditions of approval for the conditional use permits, is found to be necessary for the public health and safety and as a necessary prerequisite to ensure that the proposed and existing wind energy facilities are managed in such a way as to serve the goals and objectives of the Alameda County General Plan; and

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**WHEREAS**, the Staff Report was submitted recommending the application be approved subject to the proposed conditions of approval and adoption of the draft Resolutions; and

**WHEREAS** a Representative present on behalf of Sand Hill Wind, LLC appeared at said public hearing and presented testimony in support of the application; and

**WHEREAS** the Board did hear and consider all said reports, recommendations and testimony as hereinabove set forth and asserts the information contained in the Final EIR reflects the independent judgment of the Board;

**NOW THEREFORE**

**BE IT RESOLVED** that the Board finds that:

1. The use is required by the public need in that wind energy production in the Altamont Pass Wind Resource Area (APWRA) represents a major source of renewable energy that is currently under-utilized by aged, underperforming or defunct wind turbines with documented adverse effects on avian species. The proposed Project would replace existing turbines with more efficient turbines, and enable assessment of the potential for a new wind turbine design to reduce avian impacts. The project would generate and supply 100% emissions-free electricity to California, would support California's renewable energy goals, and would help reduce dependence on fossil fuels, a primary factor in global warming or climate change.
2. The use will be properly related to other land uses and transportation and service facilities in the vicinity in that as an existing wind farm, the Project site is well-suited from a planning and practical perspective for continued use as a wind farm. The Project parcels have been developed with wind power project uses for over 30 years and are located a substantial distance away from substantial residential, commercial and industrial uses. Existing transmission lines and infrastructure are in place to convey the electrical power generated by existing wind turbines and proposed Project turbines to the Tesla Substation, and the proposed repowering represented by the subject Project will not require any new major infrastructure. Existing supporting facilities will continue to be utilized to transmit the power generated to satisfy the electricity needs of California.
3. The use, if permitted, under all the circumstances and conditions of this particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injuries to property or improvements in the neighborhood. The proposed project would serve the goals and objectives of the Alameda County East County Area Plan and other County economic development and

environmental objectives, would have limited impacts on County services and infrastructure, and as mitigated with the measures to be adopted under the Mitigation Monitoring and Reporting Program attached to Resolution Z-14-XX as Exhibit B, would not negatively impact the surrounding community or environment. As the site is currently occupied by wind turbines and supporting facilities, once construction is complete and the wind turbines have been repowered, environmental conditions as they currently exist would be maintained, if not improved.

Furthermore: a) the subject turbines would be sited according to the County's standard setbacks; b) proper maintenance and operation efforts would be in effect to ensure the safe operation of the turbines; c) fire prevention and security measures would be in place to protect the public and local property; d) the proposed use would not substantially hinder the continued use of the project sites and surrounding land for cattle grazing as the primary property use; e) any access roads improved for the proposed use would provide improved access to the grazing lands; f) land owners would benefit from the lease payments made by the applicant, which further supports grazing operations; and g) other improvements, such as roadways, railroads, electrical substations and landfills are not adversely affected by the presence of wind turbines and their associated infrastructure because they proposed Project would replace and/or continue to use existing facilities.

4. The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered in that the proposed project is located in the A (Agriculture) zoning district, which has as its stated intent: "to promote implementation of General Plan land use policies for agriculture and other nonurban uses; to conserve and protect existing agricultural uses; and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare." The proposed project would be consistent with this intent because the development of wind power projects is both allowed and encouraged in the APWRA by the East County Area Plan, the project removes minimal land from agricultural production, and the use is appropriately located in non-urban areas and serves the public welfare.

**NOW THEREFORE**

**BE IT FURTHER RESOLVED** that the Board does hereby approve the said application as shown by materials labeled Exhibit "B" on file with the Alameda County Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following conditions:

**AUTHORIZATION**

1. Approval. Approval of this permit authorizes the installation of forty (40) shrouded wind turbines as shown on Exhibit “B”, in the Altamont Pass Wind Resource Area of eastern Alameda County by the Applicant, Sand Hill Wind LLC, on seven parcels bearing Assessor Parcel Numbers: 99B-7750-6-0, 99B-6325-1-3, 99B-7375-1-7; 99B-7500-3-1; 99B-7600-1-1; 99B-7875-1-2 and 99B-7875-1-3, to operate as the Initial Repower phase of the Sand Hill Wind Project. As used herein, the “Initial Repower” shall include all new shrouded technology wind turbines and towers, substations, transformers and both communication and power collection systems to the extent they are installed and operated under the control, operations and/or maintenance of the Applicant. The Initial Repower, thus defined, shall continue to be controlled, operated and maintained under this CUP without substantial change from the description provided in the Sand Hill Wind Project EIR as the Initial Repower. Any substantial change in the physical layout or equipment of the Initial Repower, as would constitute a definitive departure from the permitted description except as required by the conditions set forth herein, is subject to the review and approval of Alameda County.
2. Insurance: A Comprehensive General Liability insurance policy in the minimum amount of \$1,000,000 and in the form prescribed in the document “INSURANCE REQUIREMENTS, ALAMEDA COUNTY PLANNING DEPARTMENT, MARCH 27, 2014,” shall be maintained during the life of this permit. Evidence of such coverage shall be provided to the County within 20 business days following approval of this Conditional Use Permit.
3. Utility Tax Compliance. Within 60 days of this approval, the applicant shall submit to the Alameda County Planning Department evidence of business registration with the Alameda County Business Tax Unit in the form of a valid business certificate to ensure compliance with the County’s utility tax regulations.
4. Inspection Costs. The project sponsor or its successors shall be responsible for payment of all reasonable costs associated with the necessary inspections of the conditions of approval contained in the authorization of the facility, including costs incurred by the Community Development Agency, the County Fire Department, the Building Inspection Division, the Public Works Agency or any other applicable Federal, State or County department or agency.
5. Liability. By exercise of this Conditional Use Permit, the Permittee agrees to defend, indemnify and hold harmless the County of Alameda, its officers, employees, agents and servants for any and all liability caused by the negligence or wrongful act of the Permittee arising out of the exercise of this Conditional Use Permit, and to pay all claims, damages, judgments, legal costs, adjuster fees, and attorney fees related thereto.
6. Indemnification. The property owner shall defend, indemnify, and hold harmless Alameda County or its agents, officers, and employees from any claim, action, or

proceeding against Alameda County or its, agents, officers or employees to attack, set aside, void, or annul Conditional Use Permit, PLN-2013-00013, the findings of the CEQA determination, or any combination thereof. Such indemnification shall include, but not be limited to, an award of costs and attorney's fees incurred by Alameda County in its defense. The County shall promptly notify applicant of any such challenge.

7. Restoration Bond: The Permittee shall post a bond or provide an equivalent financial instrument to ensure an adequate sum of money (the specific amount to be determined by the Planning Director) is available to guarantee reclamation of abandoned facilities and restoration of properties to pre-installation conditions, in the event of failure by the Permittee to implement the terms of the conditions herein except as determined by the Planning Director for reasons outside of the Permittee's reasonable control or ability to foresee.
8. Scientific Review Committee (SRC) or Equivalent Technical Advisory Committee (TAC): The operation of the Initial Repower as it affects avian mortality on the Project sites shall be reviewed by the SRC or an equivalent TAC, serving as a balanced and independent panel of technical experts with appropriate scientific knowledge of and experience with avian safety and wind energy issues, after one year or as determined by the Planning Director, for the purpose of obtaining recommendations on the Initial Repower operations, the Full Repower or other related actions. The Planning Director may request annual review by the SRC or equivalent TAC for these same purposes for up to three years.
9. Fees. The Permittee shall be responsible for payment of all additional Planning Department staff and material costs for completing its review up to the time of this approval and for a deposit of an additional \$2,000.00 for similar costs associated with inspecting and verifying compliance with the conditions herein, and to compensate for additional costs incurred to this end. The Permittee shall also be responsible for payment to the Planning Department of the California Department of Fish & Wildlife (CDFW) CEQA filing fee of \$3,029.75 (as of January 1, 2014 or as applicable) for the Sand Hill Wind Project EIR.

**PRIOR TO AND SUBSEQUENT TO OBTAINING BUILDING PERMIT(S)**

10. Public Agency Approval. Maintain compliance with the requirements of the following agencies:
  - a. Alameda County Public Works Agency, Building Inspection Department
  - b. Alameda County Public Works Agency, Land Development Department
  - c. Alameda County Public Works Agency, Grading Division
  - d. Alameda County Sheriff's Department
  - e. California State Public Utilities Commission
  - f. California Energy Commission
  - g. California State Department of Fish and Wildlife

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11. Fire Department Approval. Applicant shall contact the Alameda County Fire Department, Fire Prevention Bureau, to obtain a fire clearance certificate. The Bureau may be reached by telephone at (510) 670-5853. The Applicant shall install a Knox Box at all entry gates, provide an emergency contact to the Department, and maintain a fire extinguisher in each ground equipment area.
12. General Conditions for Building Permits. Separate building permits will be required for the removal and demolition of existing turbines, and the construction of new proposed shrouded turbines, and shall conform to the following requirements.
  - a) Soils report and/or geological study will be required.
  - b) Comply with building codes and submittal requirements in effect at the time of submitting for building permits.
  - c) A California licensed architect or engineer shall be designated as the design professional responsible and in charge of the project submittal.
  - d) The owner or design professional shall be responsible for the property information filed with the Planning application.
13. General Conditions for Grading Permits. No grading shall be permitted on this site until a preliminary grading plan, prepared in conformance with Chapter 15.36.240 of the Alameda County Grading Ordinance, has been submitted and reviewed by the County and a grading permit is obtained in accordance with the provisions of Alameda County Grading Ordinance.
  - a) A geotechnical/geologic investigation report may be required in accordance with the provisions of the Alameda County Grading Ordinance Chapter 15.36.320. The report shall contain all of the elements listed under the Alameda County Grading Ordinance Chapter 15.36.350 if required.
  - b) The geotechnical/geologic report may be subject to a professional review by the County's consulting geotechnical engineer/geologist. It shall be the Applicant's responsibility to provide proper fund to the County for this professional review service if it is required.
  - c) No grading work will be allowed during the rainy season, from October 1 to April 30, except upon a clear demonstration, to the satisfaction of the Director of the Public Works Agency, that at no stage of the work will there be any substantial risk of increased sediment discharge from the site.
  - d) Any proposal for grading work associated with the fire access road must be reviewed and approved by Alameda County Fire Department prior to issuance of a grading permit. If the land disturbance is greater than one acre, a Notice of Intent (NOI) and a Storm Water Pollution Prevention Plan (SWPPP) must be filed with the State Water



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Resources Control Board (SWRCB) per the regulations of the General Construction Activities NPDES permit.

- e) Copy of the NOI & the SWPPP filed with the SWRCB will be required prior to issuance of a grading permit.
  - f) Prior to any work within/near watercourse, a watercourse encroachment permit or a grading permit shall be secured from the Public Works Agency in accordance with the Alameda County Watercourse Protection Ordinance. Watercourse setback shall be delineated on the exhibit plan per the provisions of Article V of the Watercourse Ordinance. The Ordinance establishes a setback of 20 feet from the top of the creek bank. However, for existing bank slopes at 2 horizontal to 1 vertical, or steeper, establish the setback by drawing a line at a 2 horizontal to 1 vertical slope from the toe of the existing bank to a point where it intercepts the ground surface and then adding 20 feet.
  - g) Prior to any work near/within the watercourse, it is the developer's responsibility for securing other permits or approvals required for the work which is regulated by any other public agency (i.e., the California Department of Fish and Wildlife, RWQCB, Army Corp of Engineers, etc.).
14. Mitigation Monitoring and Reporting Program. The Permittee shall implement all mitigation measures identified in the Mitigation Monitoring and Reporting Program attached as Exhibit B to Resolution Z-14-XX.
15. Signage. Permittee shall provide signage as required by the permitting authority (e.g. Fire Department, Planning Department) including phone numbers of the facility operator for use in case of an emergency. Basic contact information may be provided on the entry gates to the subject properties. The turbine tower, rotors, shrouds, cabinets, or mountings shall not be used for advertising.
16. Status Reports. Six months from the date of this approval, the Permittee shall submit to the Planning Director a status report describing compliance with conditions of the permit.
17. Optional Review/Revocation/Revision. At any time during the term of this permit and after notice as provided for in the initial hearing, this matter may be set for rehearing by the Board of Zoning Adjustments for the purpose of making a determination whether the use of the site has ceased for a period of six months, and whether the permit should therefore be revoked. In addition, pursuant to Section 17.54.030, the permit may be revoked if the permit has otherwise been exercised unlawfully or contrary to any condition or limitation of its issuance. As part of such rehearing, and/or reconsideration for the permit, the Board may determine that conditions previously imposed should be modified or new conditions should be added to assure continued affirmative findings for this permit. This reconsideration may include imposition of other requirements, treatments and measures to insure public safety and applicable policies of the East County Area Plan.

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Any condition modified or added shall have the same force and effect as if originally imposed.

18. Transfer of Operations. Any entity that has acquired the facilities as authorized under this permit may maintain the benefits of the existing use permit provided that a letter of notification is submitted to the Board of Zoning Adjustments within six months after such transaction, and all conditions of approval for the subject facility are carried out by the new operator/permittee.
19. Site Restoration. Permittee shall provide written notification to the Board of Zoning Adjustments upon cessation of operations on the site by the Applicant. During operation of the Project, no abandoned turbine tower, rotor, shroud, ground or other equipment components shall be stored onsite outside designated storage areas. A wind turbine shall be deemed abandoned for the purposes of this Resolution if it has not produced electricity for one year.

If all operations have been terminated, the Applicant and/or property owner shall be required to remove all improvements authorized under this permit from the site and the property shall be returned within twelve months of cessation to a condition with no shrouded wind facilities, subject to the requirements of the County.

Pursuant to Section 17-52.050 of the Alameda County Zoning Ordinance said Conditional Use Permit shall be implemented within a term of three (3) years of its issuance or it shall be of no force or effect. If implemented, said Conditional Use Permit shall terminate after thirty (30) years on March 27, 2044 and shall remain revocable for cause in accordance with Section 17-54.030 of the Alameda County Zoning Ordinance.

**WEST COUNTY BOARD OF ZONING ADJUSTMENTS  
ALAMEDA COUNTY PLANNING DEPARTMENT**