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Solving California's Energy Crisis: The Answer May Be Blowing in the Wind

Beverly J. Shane

Code Sections Affected

Government Code § 65892.13 (new).

AB 1207 (Longville); 2001 STAT. Ch. 562.

I. INTRODUCTION

Don Quixote is not the only one looking for windmills.¹ California's Legislature sees small windmills over the length and breadth of the Golden State as one way to address the State's energy crisis.² "Stage 3 power alerts, rolling blackouts, and global warming" have combined to create an energy crisis in California that begs for creative solutions.³ One solution is the use of windmills to help feed California's seemingly insatiable appetite for electricity.⁴

Although wind is certainly not a new source of energy, its modern-day use is dominated by centralized utilities in a commercial capacity.⁵ A current technological and social movement calls for private property owners to install small wind turbines for personal use in order to become more self-sufficient.⁶ Many homeowners install small wind turbines "to generate enough electricity to keep the lights and heat on without too much help from California's creaking power grid."⁷ The personal wind power movement is causing a paradigm shift, where centralized utilities may become less dominant while decentralized

1. See generally MIGUEL DE CERVANTES SAAVEDRA, *THE INGENIOUS HIDALGO DON QUIXOTE DE LA MANCHA* 63-70 (John Rutherford trans., Penguin Books 2001) (1605) (describing Don Quixote's fantasy that he is a knight who, with his squire Sancho Panza, searches the countryside for windmills that he believes are monsters which must be slain to impress his lady, Dulcinea).

2. See generally SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 1207, at 4-5 (June 28, 2001) (describing the Legislature's preemption of local land use control to facilitate the construction of small wind energy systems).

3. See *id.* at 4 (describing the energy environment in California, which is nurturing the formulation of creative solutions to the energy crisis).

4. See *id.* at 1 (citing the current energy crisis as the impetus for interest in small wind energy turbines that generate electricity).

5. See generally Pamela J. Podger, *Producing Winds of Change: As Power Prices Rise, Windmills Are One Way to Decrease Costs*, S.F. CHRON., Feb. 27, 2001, at 1-5, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2001/02/27/MN200385.DTL> (copy on file with the *McGeorge Law Review*) (discussing the desire of private property owners to take control and become self-sufficient in meeting their energy needs).

6. *Id.* at 3.

7. See *id.* at 1 (citing property owners' desire to be independent from California's power grid).

privately owned power systems take center stage.⁸ Companies that manufacture wind turbines, such as Bergey Windpower, Southwest Windpower, and Wind Turbine, witnessed the aforementioned shift.⁹ They reported a “huge increase in sales from California customers” since the energy crisis started last year.¹⁰

Concurrent with rising energy prices and fears of rolling blackouts,¹¹ property owners are “thwarted by archaic or even hostile local land-use regulations” that can hinder or halt a small turbine installation project.¹² “[T]he biggest obstacle for small, private windmills is a common thirty-five foot height restriction in some parts of Northern California, which means a zoning variance must be secured.”¹³ State law and local regulations restrict the issuance of variances to “special circumstances applicable to the property,” making their approval very limited.¹⁴ Unable to obtain the necessary variances or other permits from local jurisdictions, as many as “half of the applicants will give up in disgust.”¹⁵

The Legislature enacted Chapter 562 to eliminate this type of local governmental restraint on the installation of small wind-energy systems.¹⁶ Chapter 562 preempts local-land use controls of small windmills and requires cities and counties to allow property owners to install windmills if they comply with the State’s statutory criteria.¹⁷ The objective of this preemption is to stimulate and promote the use of wind as an “abundant, renewable, and nonpolluting energy resource” to help meet the State’s goal of expanding in-state electrical production increasing consumer energy independence.¹⁸

II. BACKGROUND

The use of wind power is not new to California. Evidence of historic use is preserved in two windmills in San Francisco’s Golden Gate Park.¹⁹ Constructed in 1902, the Dutch Windmill had a capacity to pump thirty thousand gallons of

8. *Id.* at 3.

9. *Id.* at 1.

10. *Id.*

11. *Id.* at 1, 4.

12. SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 1207, at 4 (June 28, 2001).

13. See Podger, *supra* note 5, at 3 (identifying the obstacles to siting small wind-turbine systems).

14. See CAL. GOV’T CODE § 65906 (West 1997) (explaining that an application must show “strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification”).

15. SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 1207, at 4 (June 28, 2001).

16. *Id.*

17. *Id.*

18. CAL. GOV’T CODE §§ 65892.13(a)(2), (4) (enacted by Chapter 562).

19. See generally, Windmill World, *Windmills of California*, at <http://www.windmillworld.com/world/california.htm> (last visited June 30, 2001) [hereinafter *Windmills of California*] (copy on file with the *McGeorge Law Review*) (providing a brief description of windmills in California).

fresh water per hour from underground to a reservoir on Strawberry Hill.²⁰ The seventy-five foot tall Dutch Windmill was so successful that it inspired the construction of a larger mill nearby in 1905.²¹ The Murphy Windmill stood ninety-five feet tall and had sails to catch the wind that stretched 114 feet across.²² This larger design resulted in a pumping capacity of forty thousand gallons per hour.²³ After a storm damaged the Dutch Mill in the 1930s, both windmills were decommissioned and the Dutch Mill was gutted to provide machinery for the war effort during the 1940s.²⁴ Both of these relics of California's wind power history remain today, but only the Dutch Windmill was restored to its former glory by 1981.²⁵

In more recent times, the nationwide energy crisis of the 1970s fueled the development of wind energy.²⁶ Two farms in California are located at the San Geronio Pass, near Palm Springs, and the Altamont Pass, linking the Central Valley to the San Francisco Bay area.²⁷ Today, over six thousand turbines twirl in the wind on the Altamont Pass creating a landmark as well as an energy source.²⁸

The commercial towers at Altamont Pass each generate five hundred kilowatts of power.²⁹ In contrast, a typical turbine for home use produces three thousand watts of power³⁰ and stand at least thirty-five feet high.³¹ These small turbines generate enough energy for home use and are often used to fuel ranches.³² On land near the coastal ranges or in other strong wind alleys, these small windmills can produce excess power that can be "bank[ed]" through arrangements with local power distributors and drawn upon at other times, virtually eliminating any dependence on outside electrical energy sources.³³

With new technology, the cost of producing electricity by wind power is declining, making the use of such power economically viable.³⁴ Many states,

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. See Podger, *supra* note 5, at 1 (comparing the current interest in windmills with the wind power movement of the 1970s, when the nation faced an energy crisis).

27. See Windmills of California, *supra* note 19, at 2-3 (referencing the windmill farm at Altamont Pass).

28. See *id.* (noting that "not all of the turbines are maintained in working order").

29. See Podger, *supra* note 5, at 3 (describing the amount of power generated by the commercial wind turbine system at the Altamont Pass).

30. *Id.* at 1.

31. ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 1207, at 1 (Apr. 16, 2001).

32. See Podger, *supra* note 5, at 4 (discussing the power generating capabilities of small windmills).

33. *Id.* at 2.

34. See U.S. Dept. of Energy, *Wind Powering America*, at http://www.eren.doe.gov/wind_powering_america/wind_powering_america.html (last visited June 30, 2001) (copy on file with the *McGeorge Law Review*) (encouraging the use of wind energy in addition to conventional electrical energy sources).

including California, also offer rebates or other financial incentives to promote the use of wind turbines, making wind an economically attractive alternative to other energy sources.³⁵ California's rebate program pays approximately one-half of the cost of installing a wind turbine.³⁶ Under this program, a \$32,000 system costs a homeowner only \$16,000.³⁷ Once a turbine is installed, an average wind speed of ten to twelve miles per hour can reduce a monthly power bill by as much as two hundred dollars.³⁸ With these savings, installing a wind turbine may pay for itself in five to ten years.³⁹

Such savings resulting from decreased electrical bills and government-sponsored incentive programs combined with improved technology make wind "the fastest growing source of electricity generation in the world through the 1990s."⁴⁰ Although most of that growth has occurred in Europe, where conventional electricity costs are higher than in the United States, Americans can also experience such growth because the United States, including California, has untapped wind energy sources.⁴¹

To use this untapped resource, most wind turbine manufacturers recommend homeowners have at least one acre of land to accommodate the turbine, and there must also be a clear path for the wind.⁴² To maximize the use of the wind, manufacturers also recommend that turbines be located on towers up to one hundred feet tall.⁴³

Many local zoning regulations restrict the height of towers to well under one hundred feet, thereby requiring those wishing to install and use small wind energy systems to seek variances or conditional use permits which require environmental reviews, public hearings, and processing fees.⁴⁴ These regulations

35. See U.S. Dept. of Energy, *Local and State Programs and Incentives for Renewable Energy*, at <http://www.eren.doe.gov/financing/> (last visited June 30, 2001) (copy on file with the *McGeorge Law Review*) (listing programs offered by the respective states to promote wind power including: investment and awareness programs, financial incentives and rules, and regulations policies for wind power generation).

36. See Podger, *supra* note 5, at 2 (describing the rebate program offered by the California Energy Commission to promote the use of wind power).

37. *Id.*

38. See *id.* at 3 (discussing the time required to recoup a typical investment in a small wind-turbine system through savings on monthly power bills).

39. *Id.*

40. See Wind Powering America, *supra* note 34 (explaining that Wind Powering America is an initiative to promote and facilitate the use of wind energy in place of conventional electrical energy sources).

41. *Id.*

42. See Podger, *supra* note 5, at 3 (describing the recommended attributes of a parcel of land to utilize wind power).

43. See SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 1207, at 2 (June 28, 2001) (describing the required height of a tower for running a small wind turbine effectively).

44. See *id.* at 1 (describing the cost to local governments and time in which they must act on a development project, such as a conditional use permit or variance, in order to be in accordance with the Permit Streamlining Act and California Environmental Quality Act (CEQA)). The cost cannot exceed a local government's "reasonable cost" of processing an application. The time-frame within which a local government must act on an application after accepting it as complete ranges from 60 days, when the application is exempt from review under CEQA, to 180 days when an environmental impact report is prepared pursuant to CEQA).

frustrate the installation of this clean, alternative energy source.⁴⁵

III. EXISTING LAW

In recognition of the diversity of the communities within its boundaries, California delegated authority for administering land-use regulations to local planning agencies in each city and county.⁴⁶ Under this authority and as mandated by the State, these local planning agencies develop general plans and zoning regulations for their respective communities.⁴⁷ Through these local plans and zoning ordinances, local governments typically regulate setbacks, height, bulk, number of stories, size of buildings and structures, land use, parking, signage, open space, and aesthetics⁴⁸ in a manner and to the extent necessary to accommodate the local landscape and community characteristics and goals.⁴⁹

Because land-use regulations are locally based and reflect local conditions, they can differ greatly from jurisdiction to jurisdiction.⁵⁰ The result is a patchwork of land-use regulations blanketing the State. Their only commonality is that they are often preempted by the myriad of state regulations that the legislature imposes to address state-wide land-use concerns.⁵¹

Prior to the adoption of Chapter 562, when the Legislature declared a state-wide need to promote alternative energy sources, small wind-energy systems were regulated by a wide variety of local land-use controls.⁵² Many of these controls consisted of general building setbacks and height limitations that did not address the unique design of small wind-energy system towers, commonly called windmills; consequently, discretionary entitlements, such as use permits or variances, were commonly required to allow the windmills to extend above height limits.⁵³ Opponents of the existing law criticize these entitlements as being costly and time-consuming, with application fees ranging from two thousand to

45. See generally *id.* at 2 (citing local governments' "inconsistent standards, processing delays, and high fees" as discouraging the installation of new, small wind-energy systems).

46. See generally CAL. GOV'T CODE § 65100 (West 1997) (mandating the creation of a planning agency in each city and county to implement and administer land-use regulations).

47. See generally *id.* § 65103 (West 1997) (describing the functions of local planning agencies).

48. See generally *id.* § 65850 (West 1997) (identifying zoning regulations that California authorizes local governments to impose).

49. See *id.* § 65300.9 (West 1997) (recognizing the uniqueness of each of California's communities and authorizing local jurisdictions to implement land-use controls in the "context of the local situation").

50. See *id.* § 65300.7 (authorizing local governments to implement California's land-use regulations in a manner that accommodates "local conditions and circumstances").

51. See generally SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 1207, at 4-5 (June 28, 2001) (identifying land-use issues which justified the State's preemption of local land-use regulations and imposed state-wide requirements).

52. See generally CAL. GOV'T CODE § 65892.13(a)(5) (enacted by Chapter 562) (declaring that the State's power crisis warranted the preemption of local-land use regulations and the imposition of limitations on local agencies' authority to regulate the siting and operation of small wind-energy systems).

53. See Podger, *supra* note 5, at 3 (identifying the obstacles to siting small wind-turbine systems created by local land-use regulations).

eight thousand dollars and processing times varying from two to six months,⁵⁴ thereby discouraging the installation and use of this innovative alternative energy source.⁵⁵

IV. CHAPTER 562

In an attempt to address California's electrical energy crisis and the state of emergency proclaimed by the Governor, the Legislature adopted Chapter 562 to promote the use of wind-energy systems and to eliminate any regulatory obstacles imposed by local governments upon the use of wind as an alternative energy source.⁵⁶ By adopting Chapter 562, the Legislature proclaimed that the regulation of small wind-energy systems is not an issue for local government regulation, but it is rather a state-wide concern that is more appropriately addressed through uniform standards set by the State.⁵⁷ Due to the state-wide concern, the standards established by Chapter 562 apply "to all local agencies," including charter cities and counties as well as general law local jurisdictions.⁵⁸

Chapter 562 does not totally preempt local regulation of small wind turbine systems, but it does restrict local land use controls to levels no greater than those established by the State; consequently, local controls can only be less restrictive than those imposed by the State.⁵⁹ To establish local controls, Chapter 562 requires local agencies to adopt an ordinance;⁶⁰ otherwise, a local agency can choose not to enact an ordinance and follow the State's regulations.⁶¹

The State's standards for small wind-energy systems become effective on July 1, 2002,⁶² and continue to operate until July 1, 2005, unless this sunset provision is modified or repealed by the Legislature.⁶³ Local agencies can adopt ordinances any time during the operative dates of the State's regulations. However, any applications for a small wind-energy system submitted after July 1, 2002, but prior to the effective date of a local ordinance, must be reviewed and

54. See ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 1207, at 1 (Apr. 16, 2001) (describing comments from the sponsor of AB 1207, Bergey Windpower Company, concerning the costs and time required to obtain permits from local governments for small wind-energy systems).

55. See Podger, *supra* note 5, at 3 (citing the effects of local land-use regulations on the siting of small wind-turbine systems).

56. See generally CAL. GOV'T CODE § 65892.13 (enacted by Chapter 562) (discussing California's electrical energy shortages and describing the purpose of Chapter 562 as encouraging the use of wind energy and eliminating local restraints on the installation of wind-turbine systems, when such systems comply with interim standards, until permanent statewide standards for such systems are established).

57. See *id.* § 65892.13(b) (enacted by Chapter 562) (containing the State's declaration of intent in enacting Chapter 562).

58. *Id.*

59. *Id.* § 65892.13(d)(1) (enacted by Chapter 562).

60. *Id.* § 65892.13(d) (enacted by Chapter 562).

61. *Id.* § 65892.13(f) (enacted by Chapter 562).

62. CAL. GOV'T CODE § 65892.13(f) (enacted by Chapter 562).

63. *Id.* § 65892.13(k) (enacted by Chapter 562).

approved in accordance with the State's regulations.⁶⁴

The regulations enacted by Chapter 562 apply to small wind-energy systems that are "designed for on-site home, farm, and small commercial use."⁶⁵ These systems consist "of a wind turbine, a tower, and associated control or conversion electronics, which ha[ve] a rated capacity that does not exceed the allowable rated capacity under the Emerging Renewable Fund of the Renewables Investment Plan administered by the California Energy Commission."⁶⁶ The systems are intended to "be used primarily to reduce onsite consumption of utility power."⁶⁷

Pursuant to Chapter 562, if a local agency has not adopted an ordinance, it is obligated to approve an application for a building permit for a small wind energy system⁶⁸ when the proposed parcel is "at least one acre and is outside an urbanized area" as defined in paragraph (2) of subdivision (b) of section 21080.7 of the Public Resources Code.⁶⁹ The tower cannot be higher than sixty-five feet on parcels that are less than five acres in size.⁷⁰ Additionally, no part of the small wind-energy system, including guy wires, can be located within thirty feet of a property line,⁷¹ and the system cannot generate noise that exceeds "sixty decibels (dBA), as measured at the closest neighboring inhabited dwelling."⁷² This noise limit can only be exceeded "during short-term events such as utility outages and severe wind storms."⁷³

The only exceptions to the siting of small wind-energy systems within these State regulations apply when the site of the proposed facility is listed on the National Register of Historic Places or the California Register of Cultural Resources⁷⁴ or when the siting would conflict with a local coastal program; the California Coastal Commission regulations; the Tahoe Regional Planning Agency plans; the San Francisco Bay Plan; a plan adopted by a local airport land-use commission; the Alquist-Priolo Earthquake Fault Zoning Act; a local agency program to protect a scenic highway corridor designated in the California Streets and Highways Code; the terms of a conservation easement, open-space easement or agricultural easement; or the terms of a contract executed pursuant to the Williamson Act.⁷⁵ Chapter 562 prohibits local agencies from using any local plans other than those listed above as the basis for denying the "siting and

64. *Id.* § 65892.13(f) (enacted by Chapter 562).

65. *Id.* § 65892.13(a)(4) (enacted by Chapter 562).

66. *Id.* § 65892.13(c)(1) (enacted by Chapter 562).

67. *Id.*

68. CAL. GOV'T CODE § 65892.13(f) (enacted by Chapter 562).

69. *Id.* § 65892.13(f)(1) (enacted by Chapter 562).

70. *Id.* § 65892.13(d)(1)(B) (enacted by Chapter 562).

71. *Id.* § 65892.13(f)(3) (enacted by Chapter 562).

72. *Id.* § 65892.13(f)(4) (enacted by Chapter 562).

73. *Id.*

74. CAL. GOV'T CODE § 65892.13(f)(10)(L) (enacted by Chapter 562).

75. *Id.* § 65892.13(f)(11)(A)-(K) (enacted by Chapter 562).

operation of a small wind-energy system.”⁷⁶

The State’s regulations also include approval of the system turbine “by the State Energy Resources Conservation and Development Commission as qualifying under the Emerging Renewables Fund of the Commission’s Renewables Investment Plan or certified by a national program recognized and approved by the Energy Commission.”⁷⁷ The small wind-energy system must also comply with California’s building codes, the National Electric Code, and Federal Aviation Administration requirements.⁷⁸

By adopting an ordinance, a local agency can establish review of applications for small wind-energy systems through a conditional use permit process⁷⁹ and set standards for required notice, tower height, setbacks, view protection, and aesthetics which differ from the State’s standards described above.⁸⁰ Setbacks for small wind-energy systems can exceed the thirty-foot limit established in the State regulations, but they cannot exceed a distance equal to the height of the system’s tower.⁸¹ The height of the tower may be limited to sixty-five feet on parcels from one to five acres, but tower heights of eighty feet or more must be allowed on parcels of five or more acres.⁸² Other than the provisions for changing the setback and height limits and for addressing aesthetic issues, a local agency’s ordinance must follow the State’s regulations enacted by Chapter 562.⁸³

Chapter 562 requires local agencies to review and process applications for small wind-energy systems as “expeditiously as possible.”⁸⁴ It also preempts local governments from exercising their land-use authority in addressing local conditions outside the scope of the regulations enacted by Chapter 562.⁸⁵

76. *Id.* § 65892.13(f)(12) (enacted by Chapter 562).

77. *Id.* § 65892.13(f)(5) (enacted by Chapter 562).

78. *Id.* § 65892.13(f)(6)-(8) (enacted by Chapter 562).

79. *Id.* § 65892.13(d) (enacted by Chapter 562).

80. CAL. GOV’T CODE § 65892.13(d)(1) (enacted by Chapter 562).

81. *Id.* § 65892.13(d)(1)(C) (enacted by Chapter 562).

82. *Id.* § 65892.13(d)(1)(B) (enacted by Chapter 562).

83. *See generally id.* § 65892.13(d)(1)-(4) (enacted by Chapter 562) (authorizing the enactment of an ordinance by local agencies to establish standards and procedures for the installation and operation of small wind energy systems).

84. *Id.* § 65892.13(h) (enacted by Chapter 562).

85. *See generally id.* § 65892.13 (enacted by Chapter 562) (establishing state-wide standards and regulations for the siting and operation of small wind-energy systems, mandating that local agencies comply with these standards and regulations, and limiting the authority of local agencies to regulate these systems through local land-use ordinances).

V. ANALYSIS OF CHAPTER 562

The State grants land use authority to local agencies and reserves the right to preempt that authority when it needs to address issues of state-wide concern.⁸⁶ Under the auspices of that concern, the Legislature preempted local authority for such issues as housing for very low, low, or moderate income households;⁸⁷ family day care centers;⁸⁸ residential care homes;⁸⁹ second residences;⁹⁰ manufactured homes;⁹¹ density bonuses for affordable housing;⁹² and solar energy.⁹³ The State's adoption of Chapter 562, which imposes controls on local jurisdictions' abilities to regulate small wind-energy systems, is another preemption of local land-use authority by the State under the justification of addressing a state-wide concern.⁹⁴

While there is no question that California's energy crisis is a state-wide concern and that promoting new small wind-energy systems may help resolve that issue, preempting local land-use authority in siting these systems may create multiple problems in exchange for solving one.⁹⁵ Every time the State Legislature preempts local land use regulations to address a state-wide concern, it undermines the purpose of delegating land-use authority to local governments,⁹⁶

86. See SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 1207, at 4-5 (June 28, 2001) (discussing the authority of local agencies and California's ability to preempt the authority granted in order to address a state-wide issue).

87. See CAL. GOV'T CODE § 65589.5 (West 1997 & Supp. 2001) (declaring the lack of affordable housing as a threat to the "economic, environmental, and social quality of life in California" and restricting local governments' abilities to disapprove very low, low, or moderate income housing developments or impose conditions of approval that would render the development infeasible).

88. See CAL. HEALTH & SAFETY CODE § 1597.40(a) (West 2000) (declaring that it is the intent of the State to "occup[y] the field to the exclusion of municipal zoning, building and fire codes[,] and regulations governing the use or occupancy of family day care homes for children").

89. See *id.* § 1566.3 (West 2000) (mandating that a residential care facility which "serves six or fewer persons shall be considered a residential use of property" and will be regulated as a residential use under local government land-use ordinances).

90. See CAL. GOV'T CODE § 65852.2(c) (West 1997) (prohibiting a local agency from adopting an ordinance that would totally preclude second residential units within single-family or multiple-family zoned areas).

91. See *id.* § 65852.3-65852.4 (limiting the authority of local governments to regulate the siting and installation of manufactured homes placed on a foundation system).

92. See *generally id.* § 65915 (West 1997 & Supp. 2001) (mandating the provision of a density bonus or other incentive when a housing development includes specified percentages of units for lower income households).

93. See *id.* § 65850.5 (West 1997) (prohibiting the enactment of a local land-use ordinance that would "unreasonably restrict the use of solar energy systems other than for the preservation or protection of the public health or safety").

94. See *generally id.* § 65892.13(b) (enacted by Chapter 562) (declaring that the State's power crisis warranted the preemption of local land-use regulations by the State and the imposition of limitations on local agencies' authority to regulate the siting and operation of small wind-energy systems).

95. *Id.*; see also *supra* Part IV (discussing the impact of Chapter 562 on local land use regulations).

96. See CAL. GOV'T CODE § 65300.7-.9 (West 1997) (authorizing local governments to implement land-use regulations to accommodate local conditions and circumstances).

which is to recognize the diversity of individual communities and allow those communities to address their unique conditions and circumstances through local land-use regulations.⁹⁷ These conditions include aesthetics, scenic routes, compatibility of land uses, preservation of historic resources and areas, and protection of local landmarks.⁹⁸ Some provisions of Chapter 562 only recognize these conditions on a state-wide basis and fail to acknowledge the importance of such conditions to local communities.⁹⁹ For example, Chapter 562 prohibits locating a small wind-energy system on a site listed on the National Register of Historic Places or the State Register of Historical Resources, but it provides no protection for a resource listed on a local register or for an area that is a locally-designated historic district.¹⁰⁰

Chapter 562 prohibits a local agency from denying an application for a windmill that may impact such a resource or historic district and from regulating it to minimize impacts unless the agency adopts a local ordinance.¹⁰¹ If a local government adopts an ordinance, Chapter 562 limits its authority to impose regulations on windmills that are more restrictive than those contained in Chapter 562.¹⁰² Thus local governments are required to approve the installation of new small wind-energy systems that can soar as high as an eight-story building which may dominate the surrounding landscape, despite the possibility that such approval may conflict with local land-use regulations or a community's character and goals for its future development.¹⁰³

VI. CONCLUSION

Chapter 562 promotes and encourages the use of small wind-energy systems as one way to resolve the State's energy crisis by preempting local land-use controls which can thwart the installation of such systems.¹⁰⁴ In enacting Chapter 562, the Legislature mandates "one-size-fits-all siting and installation

97. *Id.* § 65300.7.

98. *See generally id.* § 65850 (identifying zoning regulations that California has authorized local governments to impose).

99. *See id.* §§ 65892.13(f)(10)(A)-(K), (11) (enacted by Chapter 562) (prohibiting the siting of a small wind energy system where it conflicts with state regulations or regional plans).

100. *Id.* § 65892.13(f)(10)(L) (enacted by Chapter 562).

101. *See id.* § 65892.13(d) (enacted by Chapter 562) (authorizing local governments to adopt an ordinance to regulate the siting and operation of small wind energy systems within the limitations of the statewide standards).

102. *See CAL. GOV'T CODE* §§ 65892.13(d)(1)-(2) (enacted by Chapter 562) (establishing the limitations for regulations that may be included in a local ordinance for the siting and operation of small wind-energy systems).

103. *See SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 1207*, at 4-5 (June 28, 2001) (describing the State Legislature's preemption of local land-use controls).

104. *See CAL. GOV'T CODE* § 65892.13(a)(5) (enacted by Chapter 562) (declaring the Legislature's intent to preempt local land-use authority by establishing state-wide standards for the siting and installation of small wind-energy systems).

requirements” that ignore local land-use goals and policies rather than provide guidance to local governments to develop individual standards that meet the State’s desire to create a streamlined process for installing windmills.¹⁰⁵

This legislation may result in windmills popping up across California’s landscape, converting wind to electricity for the benefit of individual property owners, while towering over local landmarks and altering the character of California’s rural communities.¹⁰⁶ For local communities, these windmills may be the monsters of Don Quixote’s nightmares.¹⁰⁷

105. See Letter from Randy Scott, Advance Planning Division Chief, County of San Bernardino Land Use Services Department, to Karen Keene, California State Association of Counties, at 2 (July 17, 2001) (on file with the *McGeorge Law Review*) (expressing dissatisfaction with the Legislature’s imposition of standards for small wind-energy systems on local government).

106. See generally SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF AB 1207, at 4-5 (June 28, 2001) (describing the Legislature’s preemption of local land-use controls as facilitating the construction of small wind-energy systems).

107. See generally CERVANTES SAAVEDRA, *supra* note 1, at 64-65 (describing a windmill’s dominance over Don Quixote in his failed attempt to slay it).