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10 Attorneys for Plaintiff

11 UNITED STATE DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 SAVE STRAWBERRY CANYON, a non- )  
14 profit corporation, )  
15 )  
16 Plaintiff, )  
17 vs. )

18 DEPARTMENT OF ENERGY, a federal )  
19 agency; STEVEN CHU, in his official )  
20 capacity; A. PAUL ALIVISATOS, in his )  
21 official capacity; RICHARD C. BLUM, in )  
22 his official capacity; JESSE CHENG, in )  
23 his official capacity; DAVID CRANE, in his )  
24 official capacity; WILLIAM DE LA PEÑA, )  
25 in his official capacity; RUSSELL S. )  
GOULD, in his official capacity; EDDIE )  
ISLAND, in his official capacity; ODESSA )  
P. JOHNSON, in her official capacity; )  
GEORGE KIEFFER, in his official )  
capacity; SHERRY L. LANSING, in her )  
official capacity; MONICA C. LOZANO, in )  
her official capacity; HADI )  
MAKARECHIAN, in her official capacity; )  
GEORGE M. MARCUS, in his official )  
capacity; NORMAN J. PATTIZ, in his )  
official capacity; BONNIE RIESS, in her )  
official capacity; FREDERICK RUIZ, in his )  
official capacity; LESLIE TANG )  
SCHILLING, in her official capacity; )  
BRUCE D. VARNER, in his official )  
capacity; PAUL D. WACHTER, in his )  
official capacity; CHARLENE ZETTEL, in )  
her official capacity; EDMUND G. )

Case No. ~~011-01564~~ EDL  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

ORIGINAL  
FILED  
MAR 31 2011  
RICHARD W. WILKING  
CLERK OF COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

1 BROWN, JR., in his official capacity; )  
2 GAVIN NEWSOM, in his official capacity; )  
3 JOHN A. PEREZ, in his official capacity; )  
4 MARK G. YUDOF, in her official capacity; )  
5 REX HIME, in his official capacity; and )  
6 DAREK DEFREESE, in her official )  
7 capacity, )  
8 Defendants. )

9 INTRODUCTION

10 1. This is an action brought pursuant to the National Environmental Policy Act  
11 ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, and the Administrative Procedure Act ("APA"), 5  
12 U.S.C. §§ 701 *et seq.*, challenging the decision by defendant Department of Energy  
13 approving the Computational Research and Theory Facility Project ("CRT Project")  
14 proposed to be constructed and operated by the Lawrence Berkeley National  
15 Laboratory ("LBNL") and finding that the CRT Project will not have a significant effect on  
16 the quality of the human environment and does not require an environmental impact  
17 statement ("EIS") pursuant to NEPA.

18 2. The CRT Project includes development of a 139,700 gross square feet ("gsf")  
19 building, access driveways and pedestrian access, and associated infrastructure to  
20 accommodate (1) the Department of Energy's National Energy Research Scientific  
21 Computing Center, (2) the associated High Performance Computing ("HPC") Center,  
22 and (3) researchers and students from LBNL's Computational Research Division and  
23 the joint U.C. Berkeley/LBNL Computational Science and Engineering program. The  
24 NERSC computers around which the CRT Project is designed currently are housed in a  
25 portion of a building located in downtown Oakland. The NERSC computers have been  
located in downtown Oakland since 2000.

1           3. This action follows an earlier lawsuit filed by Plaintiff Save Strawberry Canyon  
2 which successfully challenged DOE's decision not to review the CRT Project pursuant  
3 to NEPA. *Save Strawberry Canyon v. Department of Energy, et al.*, C08-03494 WHA.  
4 Under the State of California's "little NEPA" law – the California Environmental Quality  
5 Act, Cal. Pub. Res. Code § 21000 *et seq.*, Defendants Regents of the University of  
6 California prepared a full, environmental impact report which concluded that the CRT  
7 Project would have several environmental impacts, including adverse individual and  
8 cumulative construction noise impacts and cumulative impacts on already overwhelmed  
9 traffic intersections, that would be significant but unavoidable. No additional mitigations  
10 or substantial changes have been made to the CRT Project since the preparation of that  
11 environmental impact report. NEPA requires an agency to prepare a full environmental  
12 impact statement wherever a proposed project may have a significant effect on the  
13 human environment. Despite the impacts identified by the University that could not be  
14 mitigated, DOE has opted to prepare an environmental assessment rather than an  
15 environmental impact statement. Plaintiff alleges that DOE's determination has, once  
16 again, run afoul of NEPA.

17  
18           4. The CRT Project may have a significant effect on the environment because of  
19 its integral role in the long range development plan for LRDP. The CRT Project is one  
20 of many projects approved by DOE and LBNL over the last few years that are  
21 systematically implementing a 20-year development plan for LBNL known as the LBNL  
22 Long Range Development Plan ("LRDP"). The CRT Project is specifically identified in  
23 the LRDP. Although the LBNL development plan's environmental impacts were  
24 analyzed in an EIR prepared by the University under CEQA, no environmental review of  
25

1 LBNL's development plan has been prepared by DOE. Like the EIR prepared for the  
2 CRT Project, the University's EIR for the LRDP determined that the LRDP would have  
3 significant, unavoidable environmental impacts.

4 5. The CRT Project does not propose any parking for the 300 staff who will be  
5 located at the facility. The lack of available parking may have a significant effect on the  
6 environment because DOE asserts that there is ample parking available near the  
7 project site despite the conclusion of its parking consultant that parking is at capacity.

8 6. The CRT Project is proposed to be located within 400 feet of the Hayward  
9 Fault on a steep hillside that has been subject to landslides in the past and which,  
10 according to an emeritus professor of the University of California, is located below an  
11 ancient collapsed volcanic caldera. Despite that proposed treacherous location, DOE  
12 selected inappropriately narrow objectives for the project, in particular an objective that  
13 the project must be located near other facilities at LBNL's hillside campus to promote  
14 various synergies, that assured other feasible locations would be rejected by DOE.

15 7. The CRT Project will require 17 megawatts (MW) of electricity in order to  
16 power its massive computers and accompanying cooling systems. Generating that  
17 much power requirement will result in the release of 34,711 CO<sub>2</sub>-equivalent Metric Tons  
18 (MTCO<sub>2e</sub>) of greenhouse gases. The CRT Project's contribution of greenhouse gas  
19 emissions to the existing global warming crisis may be a significant environmental  
20 impact.  
21

22 8. DOE failed to apply its discretion to carefully reviewing the CRT Project's  
23 greenhouse gas emissions and their contribution to global warming. Instead, DOE  
24 abdicated its duty to independently review this impact by hiding behind a single non-  
25

1 expert agency's draft policy guidance. A number of expert agencies have determined  
2 thresholds above which greenhouse gas emissions are considered cumulatively  
3 significant and contribute to global warming. One such expert agency is the Bay Area  
4 Air Quality Management District ("BAAQMD"), the state agency charged with  
5 implementing both state and federal clean air laws as well as the State of California's  
6 climate change law, the Global Warming Solutions Act of 2006, in the San Francisco  
7 Bay Area. BAAQMD established a significance threshold for a project's direct and  
8 indirect emissions of 1,100 MTCO<sub>2e</sub> per year of greenhouse gas emissions. Although  
9 DOE was in the midst of its environmental analysis for the CRT Project, including still  
10 reviewing air quality impacts, DOE chose to ignore BAAQMD's adopted threshold  
11 applying that agency's considerable expertise and established specifically for the Bay  
12 area.  
13

14 9. DOE's decision to prepare an EA and its failure to prepare a full EIS is  
15 inadequate pursuant to NEPA. Plaintiff seeks orders (1) restraining and enjoining  
16 Defendants from funding or taking actions to carry out the CRT Project that could result  
17 in any change or alteration to the physical environment pending the Court's decision on  
18 the merits of Plaintiff's claims; (2) declaring that the CRT Project may have a  
19 significant effect on the environment requiring Defendants DOE and STEVEN CHU to  
20 prepare an EIS; and (3) until such time as DOE completes the preparation of a legally  
21 valid EIS, enjoining Defendants from irreversibly committing resources or otherwise  
22 proceeding with construction-related activities in furtherance of the CRT Project.  
23  
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JURISDICTION AND VENUE

1  
2           10. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal  
3 question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2201  
4 (declaratory relief), and 28 U.S.C. § 2202 (injunctive relief) and the Administrative  
5 Procedures Act, 5 U.S.C. §§ 701-706.

6           11. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e).  
7 Pursuant to Local Rule 3-2(c), intradistrict venue is proper in San Francisco or Oakland,  
8 California because the sources of the violations are located within Alameda County,  
9 California.

10           12. This complaint is timely filed within the applicable statute of limitations.

PARTIES

11  
12  
13           13. Plaintiff Save Strawberry Canyon is a local citizens' group based in Berkeley,  
14 California. The group's mission is to preserve and protect the watershed lands and  
15 cultural landscape of Strawberry Canyon and adjacent lands, including Blackberry  
16 Canyon, a unique natural and cultural landscape located in the hills above the City of  
17 Berkeley. Save Strawberry Canyon was formed out of the urgent need to take action in  
18 response to the threat of intrusive and inappropriate development on lands on and  
19 adjacent to LBNL. Save Strawberry Canyon seeks to inform the public about the  
20 impacts of proposed developments, to encourage location of such developments to  
21 more suitable sites, and to promote better public access to Strawberry Canyon with its  
22 wildlife and scenic resources.

23           14. Members of Save Strawberry Canyon include concerned residents of  
24 Berkeley and Oakland, California who recreate, walk, view wildlife and scenery, engage  
25

1 in cultural and historic research, reside, and otherwise use and enjoy the natural and  
2 cultural resources of Strawberry Canyon and areas in and around LBNL and the City of  
3 Berkeley that will be adversely affected by the project. Plaintiff and its members have  
4 been involved in the administrative proceedings that have been provided to date for the  
5 CRT Project, including attending meetings and providing written and oral comments.  
6 Plaintiff's members' environmental, aesthetic, recreational, scenic, scientific, historic,  
7 cultural, informational, and community interests will, unless the relief requested herein is  
8 granted, be adversely affected and injured by Defendants' failure to comply with NEPA  
9 in approving the CRT Project. Plaintiff brings this action on behalf of its members and  
10 the public interest.

11  
12 15. Plaintiff exhausted all of the administrative remedies available from the  
13 Defendants. Plaintiff submitted oral and written comments to DOE during the  
14 administrative process conducted for the issuance of the environmental assessment  
15 ("EA"). Plaintiff or its members also raised concerns during the administrative  
16 proceedings leading up to the Regents of the University of California's and Defendant  
17 LBNL's approval of the CRT Project and certification of an EIR pursuant to CEQA,  
18 either by participating in hearings thereon or by submitting letters commenting on  
19 LBNL's Notice of Preparation, draft EIR or final EIR. The comments submitted on the  
20 EIR were reviewed by DOE during the process resulting in issuance of the EA.  
21 Plaintiff's or others' comments in the above proceedings raised each of the claims  
22 alleged in this complaint.

23  
24 16. Plaintiff attempted to persuade Defendants that their environmental review did  
25 not comply with the requirements of NEPA, to no avail. Plaintiff has no plain, speedy, or

1 adequate remedy in the ordinary course of law, in that Defendants' approval of the CRT  
2 Project and associated EA is not otherwise reviewable in a manner that provides an  
3 adequate remedy to cure Defendants' violations of NEPA. Accordingly, Plaintiff seeks  
4 an order of this Court rectifying Defendants' violations of NEPA.

5 17. Defendant DEPARTMENT OF ENERGY is a federal agency that owns LBNL  
6 and contracts with the University of California through the University's Regents to  
7 operate the LBNL on behalf of the Department of Energy. The Department of Energy  
8 also funds and operates, through LBNL, the National Energy Research Scientific  
9 Computing Center.

10 18. Defendant STEVEN CHU is the Secretary of Energy and oversees the  
11 Department of Energy including the agency's compliance with NEPA and other  
12 environmental laws.

13 19. Defendant A. PAUL ALIVISATO is the Director of LBNL. Mr. Alivisato's duties  
14 include the general management of the Lab including oversight of construction projects  
15 at LBNL.

16 20. The Regents of the University of California is a board that governs the  
17 University of California, including the University's adherence to the federal contract  
18 signed with DOE to operate and manage LBNL. The Board of Regents includes 25  
19 voting members. The 25 voting members of the Regents of the University of California  
20 are each sued in their official capacity. These Defendants include RICHARD C. BLUM,  
21 JESSE CHENG, DAVID CRANE, WILLIAM DE LA PEÑA, RUSSELL S. GOULD,  
22 EDDIE ISLAND, ODESSA P. JOHNSON, GEORGE KIEFFER, SHERRY L. LANSING,  
23 MONICA C. LOZANO, HADI MAKARECHIAN, GEORGE M. MARCUS, NORMAN J.  
24  
25

1 PATTIZ, BONNIE RIESS, FREDERICK RUIZ, LESLIE TANG SCHILLING, BRUCE D.  
2 VARNER, PAUL D. WACHTER, CHARLENE ZETTEL, EDMUND G. BROWN, JR.,  
3 GAVIN NEWSOM, JOHN A. PEREZ, MARK G. YUDOF, REX HIME, and DAREK  
4 DEFREESE. The Regents have contracted with the Department of Energy to operate  
5 and manage LBNL. The Regents were the lead agency for the purpose of considering  
6 the CRT Project pursuant to CEQA. The Regents are responsible for constructing the  
7 CRT Project.

#### 8 LEGAL BACKGROUND

#### 9 THE NATIONAL ENVIRONMENTAL POLICY ACT

10 21. "NEPA ... makes environmental protection a part of the mandate of every  
11 federal agency and department," *Calvert Cliffs' Coord. Com. v. United States*, 440 F.2d  
12 1109, 112 (D.C. Cir. 1971), and is the "basic national charter for protection of the  
13 environment." 40 C.F.R. § 1500.1(a). Its purpose is "to help public officials make  
14 decisions that are based on understanding of environmental consequences, and take  
15 actions that protect, restore, and enhance the environment." *Id.* § 1500.1(c). The  
16 Council on Environmental Quality ("CEQ"), an agency within the Executive Office of the  
17 President, has promulgated regulations implementing NEPA that have been adopted by  
18 the Department of Energy. See 10 C.F.R. § 1021.103.

19  
20 22. Among other things, NEPA requires all agencies of the federal government to  
21 prepare a "detailed statement" that discusses the environmental effects of, and  
22 reasonable alternatives to, all "major Federal actions significantly affecting the quality of  
23 the human environment." 42 U.S.C. § 4332(2)(C). This statement is commonly known  
24 as an environmental impact statement ("EIS"). An EIS must describe: (1) the  
25

1 "environmental impact of the proposed action"; (2) any "adverse environmental effects  
2 which cannot be avoided should the proposal be implemented"; and (3) any  
3 "alternatives to the proposed action." *Id.*

4 23. When an agency does not know whether the effects of its action will be  
5 "significant," it may prepare an environmental assessment ("EA") to help make that  
6 determination. 40 C.F.R. § 1501.4(b). An EA is a concise analysis of the need for the  
7 proposed action, of alternatives thereto, and of the environmental impacts of both the  
8 action and the alternatives. 40 C.F.R. § 1508.9. If the EA indicates that the federal  
9 action may significantly affect the quality of the human environment, the agency must  
10 prepare an EIS. 40 C.F.R. § 1501.4(c). If the agency decides not to prepare an EIS, it  
11 must prepare a finding of no significant impact ("FONSI"), which explains the agency's  
12 reasons for its decision. 40 C.F.R. § 1508.13.

14 24. Council on Environmental Quality ("CEQ") regulations implementing NEPA list  
15 a number of factors that an agency must consider in deciding whether to prepare an  
16 EIS. See 40 C.F.R. § 1508.27. Among other things, an action "significantly" affects the  
17 quality of the human environment, and therefore an EIS must be prepared, if: the action  
18 affects public health or safety; the geographic area has "unique characteristics" such as  
19 proximity to park lands, wetlands, wild and scenic rivers, or "ecologically critical areas";  
20 "the effects on the quality of the human environment are likely to be highly  
21 controversial"; the possible effects on the environment "are highly uncertain" or involve  
22 "unique or unknown risks"; "the action may establish a precedent for future actions with  
23 significant effects"; or "the action is related to other actions with individually insignificant  
24 but cumulatively significant impacts." 40 C.F.R. § 1508.27(b)(2)-(9).  
25



1 environment from construction and demolition, both from individual and cumulative  
2 projects implementing the 2006 LRDP will be significant and unavoidable. The 2006  
3 LRDP's environmental impact report also finds that traffic impacts on the environment  
4 from implementation of the 2006 LRDP will be significant and unavoidable. The 2006  
5 LRDP's environmental impact report identifies numerous other impacts to the  
6 environment that would be significant but for mitigation measures considered in the EIR.

7         28. The CRT Project includes the construction and operation of a new four-level  
8 computer building and the relocation of DOE's supercomputers at its National Energy  
9 Research Scientific Computing Center ("NERSC"), currently located in downtown  
10 Oakland, to the new facility. The CRT Project also will include office space to house  
11 staff and equipment of LBNL's Computer Research Division and joint LBNL/University  
12 of California, Berkeley Computational Science and Engineering program.

13         29. The proposed building would consist of an approximately 3,000-square-meter  
14 (32,000 gross square feet [gsf]) high-performance computing ("HPC") floor with a high  
15 ceiling and two additional floors of office space for a total of approximately 12,980  
16 square meters (139,700 gsf). The building's computer floor would consist of two  
17 10,000-square-foot (sf) column-free spaces flanking a central 12,000-sf space with no  
18 more than four columns. The two floors above the HPC floor would provide a variety of  
19 general office, computer configuration and support, software support,  
20 videoconferencing, meeting, and visualization laboratory spaces. An additional floor  
21 equivalent to the size of the HPC floor and dedicated to the mechanical components of  
22 the building would be located below the HPC floor. Substantial additional space would  
23 be used by the buildings electrical components. Five 20-foot high cooling towers  
24  
25

1 needed to cool the supercomputers would be installed on the southeast side of the  
2 building.

3 30. The CRT Project is proposed to be located on a 2.25 acre site near the  
4 western border of LBNL, uphill from the University of California, Berkeley campus and  
5 residential neighborhoods. The site is located approximately 400 feet east of the  
6 Hayward Fault. The site is a very steep hillside, with an average slope of 2:1 dropping  
7 roughly 30 meters (100 feet) from east to west. With the exception of an existing  
8 pedestrian staircase, the site is undeveloped. The site is located in a California  
9 Geological Survey-defined seismic landslide hazard area. A previous landslide  
10 underlies a portion of the building site. In order to construct the proposed building,  
11 approximately 15,500 cubic yards of soil will be removed from the hillside. It is  
12 anticipated that all of that removed dirt must be trucked off-site. Approximately 12,200  
13 cubic yards of structural fill will be imported to the site.  
14

15 31. Dr. Garniss Curtiss, an emeritus professor in the University of California,  
16 Berkeley's Department of Earth and Planetary Science, submitted several comments on  
17 the proposed CRT Project. Dr. Curtiss, in his comments, explains how most of the  
18 LBNL hill campus above the proposed CRT project site rests on an ancient, collapsed  
19 caldera. Dr. Curtiss also explains how the proposed site of the CRT Project is located  
20 to the west of this collapsed caldera on cretaceous sedimentary rocks east of the  
21 Hayward Fault. Dr. Curtiss notes that this entire area is uplifting at a rate of about one  
22 centimeter per year. Dr. Curtiss expresses strong concern questioning the stability of  
23 the steep slope on which the CRT Project is proposed to be located and the possibility  
24 of a major landslide occurring in that portion of the LBNL hill campus.  
25

1           32. The site currently is vegetated, including approximately 75 eucalyptus trees  
2 and a number of oak and bay trees, as well as grassy areas. The site is visible from  
3 the public road which runs up to LBNL's access gate located on the west side of the  
4 project site.

5           33. The CRT Project would accommodate the entire staffs of the NERSC and  
6 LBNL's Computational Research Division, and the joint LBNL/U.C. Berkeley  
7 Computational Science and Engineering program. The total combined office occupancy  
8 will be about 300 staff. DOE proposes the relocation and consolidation of these three  
9 programs in order to centralize and co-locate all similar and related functions and  
10 programs to improve efficiency and productivity and foster intellectual exchanges.  
11 However, about 2900 users of the NERSC are remote users who access the facility  
12 through high-performance networks.

13           34. Upon completion, the CRT Project will generate daily commuter traffic of  
14 approximately 192 new daily trips. These new trips will be in addition to the 5,700 daily  
15 trips currently being made on average by LBNL's existing approximately 4,000  
16 employees. At least two intersections within the City of Berkeley near the project site  
17 already operate at a Level of Service ("LOS") F. LOS E and F represent conditions in  
18 which the roadway is at or approaching capacity, and breakdowns in traffic flow are  
19 more likely to occur. These intersections include Stadium Rim Way/Gayley Road and  
20 Bancroft Way/Piedmont Avenue. The EIR prepared for the CRT project by the  
21 University of California concludes that the additional vehicle traffic from the CRT Project  
22 will result in significant and unavoidable cumulative impacts at these intersections as  
23 well as two other nearby intersections.  
24  
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1           35. Construction activity at the project site is predicted by DOE to reach upwards  
2 of 66 decibels at the nearby Nyingma Institute, a meditation center and residential  
3 facility. The City of Berkeley's Municipal Code prohibits noise levels from exceeding 65  
4 decibels in areas zoned for multi-residential use from 7 a.m. to 7 p.m. The EA  
5 estimates the noise levels during construction would range from 61 to 66 dBA at the  
6 Nyingma Institute. The environmental impact report prepared for the CRT Project by  
7 the University of California estimated noise levels from construction of the CRT Project  
8 to range from 65 to 70 dBA Leq at the nearest receptors, including the Nyingma  
9 Institute. As a result, the EIR concluded that construction noise, although temporary,  
10 would cause a significant and unavoidable impact to the surrounding environment.

11           36. A key purpose of the CRT Project is to relocate and house the NERSC. The  
12 NERSC is a series of large, high performance computers. LBNL currently houses the  
13 NERSC in a 19,000-square-foot computer room in leased space at LBNL's Oakland  
14 Scientific Facility in downtown Oakland. The supercomputers require substantial  
15 quantities of electrical power and water to function. The CRT Project, at full build-out,  
16 will require approximately 32 million gallons of water per year or an average of about  
17 88,000 gallons per day. The vast majority of that water demand is necessary to cool the  
18 supercomputers. At full occupancy, the CRT Project will require 17 megawatts (MW) of  
19 power. The entire LBNL uses a peak of approximately 12.5 MW of power currently. At  
20 the time of initial occupancy of the CRT Project, the facility will require up to 7.5 MW of  
21 power. Modifications to the Grizzly Peak substation and transmission facilities within  
22 LBNL would be needed in order to accommodate the CRT facility's power needs.  
23  
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1           37. The electric power needs of the CRT Project are estimated to generate  
2 34,711 CO<sub>2</sub>-equivalent Metric Tons (MTCO<sub>2e</sub>) of carbon emissions each year of its  
3 operation. The Bay Area Air Quality Management District has established a  
4 significance threshold of 1,100 MTCO<sub>2e</sub> of direct and indirect emissions above which  
5 projects proposed in the San Francisco Bay Area normally will have a significant effect  
6 on the environment pursuant to the California Environmental Quality Act.

7           38. On July 26, 2007, LBNL published a notice of preparation announcing their  
8 intent to prepare an EIR pursuant to CEQA for the proposed CRT Project. LBNL held a  
9 public scoping meeting for the EIR on August 8, 2007.

10           39. LBNL and the University circulated a Draft EIR for public and agency review  
11 between November 9, 2007 and January 4, 2008. On December 10, 2007, LBNL held a  
12 public hearing on the draft EIR.

13           40. In April 2008, LBNL and the University released a final EIR. On May 13,  
14 2008, the Regents' certified the final EIR pursuant to CEQA, adopted findings and  
15 mitigation measures and approved the CRT Project. On May 28, 2008, the Regents  
16 filed a notice of determination to carry out the project with the California State  
17 Clearinghouse.

18           41. On July 21, 2008, Plaintiff Save Strawberry Canyon filed a complaint in the  
19 United States District Court for the Northern District of California challenging DOE's  
20 decision not to prepare any environmental review of the CRT Project pursuant to NEPA.  
21 On March 18, 2009, Judge William Alsup issued a preliminary injunction prohibiting any  
22 ground disturbing activities relating to the CRT Project pending a decision on the merits  
23 of Plaintiff's challenge. On April 22, 2009, Judge Alsup further sustained the Court's  
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1 previous injunction order. On August 17, 2009, Judge Alsup issued summary judgment  
2 in favor of Plaintiff holding that “the CRT project, including construction of the CRT  
3 facility at LBNL, is subject to NEPA” and enjoined the CRT Project “until proper NEPA  
4 review is completed by the Department of Energy.”

5 42. On September 14, 2010, DOE released a draft environmental assessment for  
6 a 30-day public comment period. On March 1, 2011, DOE issued a final environmental  
7 assessment as well as a finding of no significant impact, deciding not to prepare a full  
8 environmental impact statement for the CRT Project.

9 43. Defendants are threatening to proceed with the construction and operation of  
10 the project in the near future, including the removal of trees and grading activities.  
11 Defendants’ initiation of construction of the Computational Research and Theory Facility  
12 will irreparably harm the environment in that Defendants will commence with  
13 construction or demolition activities without compliance with NEPA resulting in air  
14 pollution, aesthetic, cultural, noise, traffic, and other environmental impacts to Plaintiff.  
15 A temporary restraining order and preliminary and permanent injunctions should issue  
16 restraining Defendants from proceeding with construction-related activities for the CRT  
17 Project.  
18

19 **FIRST CLAIM FOR RELIEF**  
20 **(Violation of NEPA and APA – Failure to Prepare an Environmental Impact**  
21 **Statement for the Project)**

22 44. Plaintiffs reallege, as if fully set forth herein, each and every allegation  
23 contained in the preceding paragraphs.

24 45. DOE’s approval of the CRT Project was a major federal action significantly  
25 affecting the human environment within the meaning of section 4332(2)(C) for at least  
the following reasons:

1           46. The CRT Project affects public health or safety within the meaning of 40  
2 C.F.R. § 1508.27(b)(2).

3           47. The effects of the action on the quality of the human environment are likely to  
4 be “highly controversial” within the meaning of 40 C.F.R. § 1508.27(b)(4). For example,  
5 the CRT Project location is highly controversial because of the potential presence of a  
6 collapsed volcanic caldera and the project’s location within a seismic landslide hazard  
7 area.

8           48. The possible effects of the CRT Project on the human environment are  
9 “highly uncertain” and involve “unique [and] unknown risks” within the meaning of 40  
10 C.F.R. § 1508.27(b)(5).

11           49. The CRT Project may have a significant effect on the environment because of  
12 its location on a very steep hillslope in a seismic landslide hazard area within 400 feet of  
13 the Hayward Fault.

14           50. The CRT Project “may establish a precedent for future actions with significant  
15 effects” within the meaning of 40 C.F.R. § 1508.27(b)(6). The CRT Project, like other  
16 projects at LBNL built or approved by DOE based only on environmental assessments,  
17 further establishes a precedential effect to construct projects on LBNL’s hill-side  
18 campus which separately or cumulatively may have significant effects.

19           51. The action is “related to other actions with individually insignificant but  
20 cumulatively significant impacts” within the meaning of 40 C.F.R. § 1508.27(b)(7). For  
21 example, the CRT Project may have a significant effect on development at LBNL  
22 because of its role in the Long Range Development Plan and Ten-Year Plan for LBNL,  
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1 development plans that have never been subjected to review by DOE pursuant to  
2 NEPA.

3 52. The CRT Project may have cumulative impacts associated with the long  
4 range building plan under way at LBNL.

5 53. The CRT Project may have a significant effect on the environment, either  
6 directly or cumulatively, from the excessive noise that will occur during the project's  
7 construction as well as operation.

8 54. The CRT Project may have a significant effect on the environment, either  
9 directly or cumulatively, from the additional traffic that will result from the project.

10 55. The CRT Project may have a significant cumulative effect on the environment  
11 as a result of the substantial greenhouse gas emissions that will be created and  
12 prolonged by the project's large power demand.

13  
14 56. Consequently, DOE was obligated to prepare an EIS for the CRT Project.

15 57. DOE's failure to prepare an EIS before approving the CRT Project violated  
16 and is continuing to violate Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).

17 58. DOE's decision not to prepare an EIS for the CRT Project was arbitrary,  
18 capricious, an abuse of discretion, not in accordance with law, and without observance  
19 of procedure required by law within the meaning of the APA, 5 U.S.C. § 706(2), and  
20 should therefore be declared unlawful and set aside by this Court.

21 **SECOND CLAIM FOR RELIEF**  
22 **(Violation of NEPA and APA – Failure to Adequately Evaluate Impacts in the**  
23 **Environmental Assessment)**

24 59. Plaintiffs reallege, as if fully set forth herein, each and every allegation  
25 contained in the preceding paragraphs.

1           60. The environmental assessment prepared by DOE for the CRT project is  
2 arbitrary, capricious, an abuse of discretion, not in accordance with law, and without  
3 observance of procedure required by law for the following reasons:

4           61. The discussion of parking and related traffic impacts included in the  
5 environmental assessment is arbitrary and capricious because it conflicts with the  
6 evidence in the record.

7           62. DOE improperly abdicates to the Council on Environmental Quality ("CEQ")  
8 its responsibility to take a hard look at the CRT Project's greenhouse gas impacts by  
9 treating draft guidelines proposed by CEQ which do not propose to establish a  
10 significance threshold for greenhouse gas emissions as trumping or superseding  
11 available environmental significance thresholds prepared and adopted in final form by  
12 an expert state agency. As a result, the discussion of the cumulative impacts to climate  
13 change from the CRT Project's greenhouse gas emissions is arbitrary and capricious.  
14

15           63. DOE's discussion of alternatives to the CRT Project included in the  
16 environmental assessment is inadequate because DOE's statement of purpose and  
17 need is improperly narrow.

18           64. The environmental assessment prepared for the CRT Project is inadequate  
19 because DOE pre-judged its decision on the CRT Project by committing itself to the  
20 CRT Project prior to releasing the assessment.

21           65. DOE's failure to prepare an adequate environmental assessment violated and  
22 is continuing to violate Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).

23           66. DOE's failure to prepare an adequate environmental assessment and its  
24 accompanying finding of no significant impact were arbitrary, capricious, an abuse of  
25

1 discretion, not in accordance with law, and without observance of procedure required by  
2 law within the meaning of the APA, 5 U.S.C. § 706(2), and should therefore be declared  
3 unlawful and set aside by this Court.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request that the Court:

6 1. Issue a declaratory judgment that DOE's CRT Project is a major federal  
7 action that may have a significant impact on the human environment requiring the  
8 preparation of an EIS;

9 2. Issue a declaratory judgment that the EA, including the accompanying finding  
10 of no significant impact, prepared by DOE in connection with its decision to approve the  
11 CRT Project violated and is violating NEPA and the Administrative Procedure Act;

12 3. Issue an order vacating the EA and the finding of no significant impact;

13 4. Order the Defendants Department of Energy and Steven Chu to prepare,  
14 circulate and consider an EIS consistent with the requirements of NEPA and its  
15 implementing regulations.  
16

17 5. Preliminarily and permanently enjoin Defendants from funding the CRT  
18 Project or initiating any activities in furtherance of the CRT Project that could result in  
19 any change or alteration to the physical environment unless and until Defendants  
20 Department of Energy and Steven Chu prepare an EIS that complies with the  
21 requirements of NEPA.

22 6. Award Plaintiff its reasonable attorneys' fees and its costs, expenses and  
23 disbursements associated with this action.  
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7. Grant Plaintiff such additional and further relief as the Court may deem just and proper.

DATED: March 31, 2011

Respectfully submitted,



Michael R. Lozeau  
LOZEAU DRURY LLP

Attorneys for Plaintiff