

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 RIVERVIEW ABBEY
5 MAUSOLEUM COMPANY,
6 *Petitioner,*

7
8 vs.

9
10 CITY OF PORTLAND,
11 *Respondent,*

12
13 and

14
15 SOUTH BURLINGAME
16 NEIGHBORHOOD ASSOCIATION,
17 *Intervenor-Respondent.*

18
19 LUBA Nos. 2018-016 and 2018-017

20
21 ORDER

22 **MOTION TO INTERVENE**

23 South Burlingame Neighborhood Association (the neighborhood
24 association) moves to intervene on the side of respondent in the above-
25 captioned, consolidated appeals. No party opposes the motions and they are
26 granted.

27 **BACKGROUND**

28 On March 5, 2018, petitioner filed two notices of intent to appeal two
29 decisions. The first decision is the city council's decision that denies
30 petitioner's application for a subdivision and environmental review (LUBA No.
31 2018-016). The second decision is the decision of the director of the city's

1 Bureau of Development Services (BDS) approving a waiver of the local appeal
2 fee for the neighborhood association (LUBA No. 2018-017). The Board
3 consolidated those appeals and the city filed a consolidated record. Petitioner
4 and the neighborhood association filed record objections. The city filed
5 responses to each objection and petitioner filed a reply, to which the city
6 objects. The city also filed a motion to dismiss LUBA No. 2018-017, to which
7 petitioner filed a response. For the reasons explained below, we deny the city's
8 motion to dismiss, petitioner's record objections, and the neighborhood
9 association's record objections.

10 The land use application underlying these appeals is for a subdivision of
11 vacant property. A city hearings officer approved the subdivision. The
12 neighborhood association appealed that approval to the city council (the local
13 appeal). The deadline for filing the local appeal was January 12, 2018, at 4:30
14 p.m. On January 12, 2018, at 2:59 p.m., the neighborhood association's
15 president filed two city forms: a Type III Decision Appeal Form (appeal form)
16 and a Type III Decision Appeal Fee Waiver Request for Organizations (fee
17 waiver form). Both forms are marked as "Received By" a BDS staff person.
18 Record 3737, 3741.

19 The appeal form contains a preprinted line that provides "[Y] [N] Fee
20 Waived." The "[Y]" is marked on the neighborhood association's appeal form.
21 Record 3737. The fee waiver form contains a preprinted line that provides two

1 check boxes “[] Waiver Approved [] Waiver Denied.” Neither box is checked
2 on the neighborhood association’s fee waiver form. Record 3741.

3 On January 12, 2018, after the neighborhood association submitted its
4 appeal and fee waiver request, Robert Griffith (Griffith), an owner of petitioner
5 Riverview Abbey Mausoleum Company and a member of the neighborhood
6 association, submitted written argument that the appeal was invalid and should
7 not be heard because, according to Griffith, the neighborhood association’s
8 vote to file the local appeal was not made in accordance with the association’s
9 bylaws. Record 3746–50. On January 17, 2018, BDS issued a notice of public
10 hearing for February 7, 2018. Record 3885. On February 5, 2018, Griffith
11 submitted a letter to the city council reasserting that the appeal was invalid.
12 Record 3981–85. In its final decision, which is the subject of the appeal in
13 LUBA No. 2018-016, the city council rejected Griffith’s argument:

14 “[Petitioner] submitted testimony to Council (letter from
15 [petitioner’s counsel] dated February 5, 2018) questioning the
16 Council’s jurisdiction to hear this appeal. Specifically, [petitioner]
17 believes [the neighborhood association] was improperly granted
18 an appeal fee waiver. He argues that their appeal, which was
19 submitted before the appeal period ended but without an appeal
20 fee, was invalid. PCC 33.750.020 provides that the Director of
21 BDS determines the rules and procedures for waiver of fees. The
22 Type III Decision Appeal Form, in the record, indicates that BDS
23 staff waived the fee. [Petitioner’s] argument regarding validity of
24 an appeal fee waiver is not properly before Council as Council has
25 delegated authority to waive appeal fees to the BDS Director. BDS
26 Administrative Rule ENB [Environment (Built)] 13.25 provides
27 that the decision of the Director of BDS to waive fees is final.
28 BDS’s decision is separate from Council’s decision on the
29 application that is the subject of these findings.” Record 17.

1 The city council's decision granted the local appeal and denied petitioner's
2 application for subdivision. Record 63–64. As explained, petitioner filed two
3 separate appeals to LUBA challenging the fee waiver decision and the
4 subdivision denial.

5 **MOTION TO DISMISS**

6 The city moves to dismiss the appeal of the fee waiver decision, LUBA
7 No. 2018-017, for lack of jurisdiction for three reasons. First, the city argues
8 that the challenged fee waiver decision is not a land use decision, because it
9 does not concern the application of any land use regulations. Second, the city
10 argues that, even if the decision concerns the application of land use
11 regulations, the decision was made under land use standards that do not require
12 interpretation or the exercise of policy or legal judgment, and therefore is
13 excluded from LUBA's jurisdiction under ORS 197.015(10)(b)(A). See n 1.
14 Third and finally, the city argues that the appeal was untimely filed under ORS
15 197.830. See n 5. We reject all three arguments.

16 **A. The fee waiver decision concerns the application of a land use**
17 **regulation.**

18 The city argues that the fee waiver decision does not concern the
19 application of any land use regulation, and therefore is not a land use decision.
20 See ORS 197.825(1) (conferring exclusive jurisdiction to LUBA to review any
21 land use decision or limited land use decision of a local government); ORS

1 197.015 (defining “land use decision” and “land use regulation”).¹ According
2 to the city, the fee waiver did not apply any regulation that is part of the city
3 zoning code, Portland City Code (PCC) Title 33, but instead applied only BDS
4 rules regarding administrative fees for land use processes, adopted by the

¹ ORS 197.015 provides, in part:

“(10) ‘Land use decision’:

“(a) Includes:

“(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

“(i) The goals;

“(ii) A comprehensive plan provision;

“(iii) A land use regulation; or

“(iv) A new land use regulation;

“* * * * *

“(b) Does not include a decision of a local government:

“(A) That is made under land use standards that do not require interpretation or the exercise of policy or legal judgment;

“* * * * *

“(11) ‘Land use regulation’ means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.”

1 planning director, pursuant to a delegation from the city council. The city
2 argues that previous cases concluding that fee waiver decisions are land use
3 decisions were decided under former versions of PCC Title 33 and therefore
4 are distinguishable, because the city's fee waiver criteria are no longer codified
5 in PCC Title 33, but currently exist only as BDS administrative rules adopted
6 by the planning director. *See Breivogel v. Washington County*, 114 Or App 55,
7 834 P2d 473 (1992) (a decision to reject a local appeal under PCC land use
8 regulations is a land use decision subject to LUBA's review); *Ramsey v. City of*
9 *Portland*, 29 Or LUBA 139 (1995) (a decision to reject a local appeal for
10 failure to pay the required fee is a land use decision).

11 Petitioner responds that the substantive fee waiver standards are the
12 same as they were when *Breivogel* and *Ramsey* were decided, and the fact that
13 the city has now deleted those waiver standards from PCC Title 33 and
14 delegated to the planning director the adoption of the same standards as BDS
15 administrative rules does not mean that the fee waiver decision does not
16 concern the application of one or more land use regulations. Petitioner
17 contends that, at a minimum, the fee waiver decision concerns the application
18 of PCC 33.750.020 and PCC 33.730.030.

19 PCC 33.750.020 provides:

20 "Required fees for land use reviews and appeals of land use
21 decisions are stated in the Fee Schedule for Title 33, available at
22 the Development Services Center. Rules and Procedures for the
23 payment of fees, refunds, and waiver of fees are determined by the
24 Director of BDS."

1 PCC 33.730.030(H)(1) governs type III procedures and provides that an appeal
2 is filed when completed BDS forms are submitted with the required fee.

3 We agree with petitioner that a decision whether to waive the appeal fee
4 required by PCC 33.730.030(H)(1) concerns, at a minimum, the application of
5 PCC 33.750.020 and PCC 33.730.030 and, therefore, the decision falls within
6 the definition of “land use decision” at ORS 197.015(10)(a), unless some
7 exclusion applies.² As the Board observed in *Friends of Linn County v. City of*
8 *Lebanon*, 45 Or LUBA 408, 413 (2003), *aff’d* 193 Or App 151, 88 P3d 322
9 (2004), if the legislature had intended the term “land use decision” in ORS
10 197.015(10) to “only include decisions that actually apply a land use
11 regulation, it could have limited its scope to decisions that ‘apply’ a land use
12 regulation rather than include decisions that ‘concern the application’ of a land
13 use regulation.” *Id.* (quoting *Friends of Yamhill County v. Yamhill County*, 43
14 Or LUBA 270, 273–74 (2002)).

15 **B. The fee waiver decision is not excepted from LUBA’s jurisdiction**
16 **under ORS 197.015(10)(b)(A).**

17 The city argues that even if the fee waiver decision concerns the
18 application of a land use regulation, and therefore is a land use decision, the
19 decision nonetheless falls within the so-called “ministerial exception” to

² The city also argues that PCC 33.750.020 does not effectively incorporate ENB 13.25 by reference so as to make ENB 13.25 a land use regulation. We do not rely on the principle of incorporation by reference in concluding that the fee waiver decision concerns the application of a land use regulation.

1 LUBA’s jurisdiction for local government decisions “made under land use
2 standards that do not require interpretation or the exercise of policy or legal
3 judgment.” ORS 197.015(10)(b)(A); see n 1.

4 As the Court of Appeals has recognized, jurisdictional challenges on
5 review of a decision to allow or reject a local appeal under local appeal
6 requirements should be scrutinized because of the potential that local appeal
7 requirements could be applied to evade review of land use decisions. In
8 *Breivogel*, a case discussed by both parties, the county planning director
9 dismissed a local appeal of a golf course land use approval because the
10 appellant failed to sign the appeal as required by the county code. 114 Or App
11 55, 57. The Court of Appeals rejected the county’s arguments that the
12 exception in ORS 197.015(10)(b)(A) deprived LUBA of jurisdiction. *Id.* at 57–
13 58. The court concluded that the substance of the appeal to LUBA was not the
14 planning director’s decision dismissing the local appeal but, instead, the
15 county’s decision approving the golf course, which indisputably was a land use
16 decision over which LUBA had jurisdiction. *Id.* The court explained that, if a
17 dismissal for failure to sign the local appeal as required by the county code was
18 a decision that was subject to the exclusion at ORS 197.015(10)(b)(A), rather
19 than one that finalizes a land use decision, then the county could use that code
20 section to effectively evade further review of land use decisions. *Id.*

21 Similarly, in *Ramsey*, the city rejected a local appeal because the
22 appellant failed to either pay the appeal fee or obtain a fee waiver. 29 Or

1 LUBA 139, 141. On appeal to LUBA, the city argued that the decision was
2 subject to the exception to LUBA's jurisdiction in ORS 197.015(10)(b)(A). *Id.*
3 at 143. The Board rejected that argument relying in part on the Court of
4 Appeals' reasoning in *Breivogel* that the fee waiver decision effectively
5 finalized the underlying land use decision. *Id.*

6 Both *Breivogel* and *Ramsey* involved decisions that rejected a local
7 appeal, thus rendering the underlying decision on the land use application the
8 city's final decision. For that reason alone, the city argues that *Breivogel* and
9 *Ramsey* are distinguishable, because in the present case the city accepted the
10 local appeal, the final review body, the city council, determined that the local
11 appeal was valid, and the city council rendered a final decision on the
12 underlying land use application. It is true that the present case involves
13 acceptance, rather than rejection of a local appeal under local appeal
14 requirements, but the same concerns that animated the court in *Breivogel* are
15 present here.

16 Where the local government rejects the local appeal for noncompliance
17 with local appeal requirements, as in *Breivogel* and *Ramsey*, that has the effect
18 of rendering the underlying decision on appeal the local government's final
19 decision on the land use application. If the exclusion in ORS
20 197.015(10)(b)(A) precludes LUBA's review of a local appeal decision,
21 disputes over how a local government applies local appeal requirements would
22 either be unreviewable or, perhaps, would be reviewed in circuit court (rather

1 than at LUBA). *See* ORS 197.825(3)(a) (providing that circuit courts retain
2 jurisdiction to grant relief in proceedings arising from decisions described in
3 ORS 197.015(10)(b)). We understand *Breivogel* to stand for the proposition
4 that local appeal decisions and substantive review of land use decisions are so
5 closely integrated that LUBA, rather than the circuit court, has jurisdiction to
6 resolve disputes over how local appeal requirements are applied.

7 The same reasoning supports LUBA’s jurisdiction over disputed local
8 appeal decisions when the local government *accepts* the local appeal, and
9 subsequently issues the final decision on the land use application, as in the
10 present case. If the city is correct that LUBA lacks jurisdiction over the appeal
11 of the local appeal decision pursuant to ORS 197.015(10)(b)(A), then that
12 means that exclusive jurisdiction to review challenges to the local appeal
13 decision lies in circuit court, either by filing a writ of review or by transfer
14 from LUBA. But at the same time the petitioner may have filed a timely appeal
15 of the final substantive decision on the land use application, as happened in the
16 present case, which presents the potential for duplicative proceedings and
17 conflicting decisions between the two review bodies. Even if direct conflict
18 could be avoided by suspending proceedings in either forum, there would be
19 significant potential for delay in resolving appeals of land use decisions
20 contrary to the legislative policy in ORS 197.805.³

³ ORS 197.805 provides, in part, “It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters

1 The jurisdictional and prudential issues inherent in the city’s position are
2 avoided if the decision granting the fee waiver in this case is viewed as an
3 interlocutory staff decision, one that is integrally related to the substantive land
4 use decision made by the city council, and one that to the extent it constitutes a
5 separate decision, unreviewable by the city council, becomes final for purposes
6 of appeal to LUBA when the city council issued its final decision on the
7 substantive land use decision.

8 Finally, even if we confine our jurisdictional analysis to the standards
9 used to grant the fee waiver decision in this case, we disagree with the city that
10 the ORS 197.015(10)(b)(A) exclusion applies. As noted above, PCC
11 33.750.020 provides that the BDS director determines the rules and procedures
12 for the waiver of fees. BDS Administrative Rule ENB 13.25, IV governs
13 administrative fees for land use processes and provides, in relevant part:

14 **“IV. Fee Waivers or Refunds**

15 “The Director of BDS will consider fee waivers or refunds *on a*
16 *case by case basis*. The decision of the Director to waive or refund
17 fees is final.

18 **“A. Fee Waivers**

19 “The Director *may* waive BDS land use review application or
20 appeal fees as specified below for recognized organizations, low-
21 income applicants, City government or nonprofit organizations. (A
22 ‘recognized organization’ is defined in PCC 33.910.) An

involving land use and that those decisions be made consistently with sound principles governing judicial review.”

1 application for a fee waiver may be filed concurrently with the
2 land use review application or appeal form.

3 **“1. Recognized organization appeal fee waivers.**

4 **“a. Type II and IIx land use review appeals.** Per
5 state law,^[4] no appeal fee is charged to
6 recognized organizations for the appeal of a
7 Type II or Type IIx land use review and the site
8 must be within that neighborhood or
9 community organization’s boundaries. To be
10 deemed ‘recognized’ by the Office of
11 Neighborhood Involvement (ONI), the
12 organization has to abide by the Oregon Public
13 Records and Public Meeting Laws, and ONI
14 requires that any vote of the neighborhood
15 association be in accordance with the
16 organization’s bylaws.

17 **“b. Type III land use review appeals.** The
18 Director *may* waive land use review appeal fees
19 for recognized organizations for Type III land
20 use reviews if all of the following conditions
21 are met:

22 **“1)** The recognized organization has
23 standing to appeal. (See City Zoning
24 Code Section 33.730.030.F, Ability to
25 appeal);

26 **“2)** The appeal is being made on behalf of the
27 recognized organization; and

28 **“3)** The appeal contains the signature of the
29 chairperson of the organization, as recognized

⁴ ORS 227.175(10)(b) provides that initial evidentiary hearing appeal fees “shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.”

1 by the Office of Neighborhood Involvement, or
2 the signature of other persons authorized by the
3 organization, confirming the vote to appeal was
4 done in accordance with the organization's
5 bylaws.” (Boldface in original; emphases
6 added.)

7 The fee waiver decision in this type III land use review is not subject to
8 the ministerial exception because the waiver is discretionary and requires the
9 exercise of policy or legal judgment. The BDS Director (or her delegate) may
10 waive land use review appeal fees for recognized organizations for Type III
11 land use reviews only if all the conditions enumerated in ENB 13.25 are met.
12 That determination requires at least three legal judgments: (1) that the
13 recognized organization has standing to appeal under PCC 33.730.030.F; (2)
14 that the appeal is being made on behalf of the recognized organization; and (3)
15 that the appeal contains the signature of a person authorized by the
16 organization to file the appeal. Standing, agency, and legal authority are all
17 legal determinations. Moreover, a recognized organization that meets the
18 conditions of ENB 13.25(IV)(A)(1)(b)(1) through (3) is not *entitled* to a fee
19 waiver; instead, a fee waiver on a Type III review is discretionary.

20 For the foregoing reasons, we disagree with the city that the fee waiver
21 decision falls within the ORS 197.015(10)(b)(A) exclusion to LUBA's
22 jurisdiction.

1 **C. The appeal of the fee waiver decision was timely filed.**

2 The city argues, in the alternative, that even if the fee waiver decision is
3 a land use decision that is not excluded from LUBA’s jurisdiction, the appeal
4 must be dismissed because it was filed more than 21 days after the fee waiver
5 decision became final. ORS 197.830(9).⁵

6 The city contends that the fee waiver decision became final for purposes
7 of appeal to LUBA on January 12, 2018, the day that BDS staff received the
8 appeal form and marked the “[Y]” on the “Fee Waived” line. Alternatively, the
9 city asserts that petitioner’s counsel received notice of the fee waiver decision
10 on January 17, 2018, because the appeal form was attached to the notice of
11 public hearing. Finally, the city argues that petitioner’s counsel’s letter to the
12 city council dated February 5, 2018, demonstrates that petitioner was aware
13 that BDS had approved the fee waiver. However, because petitioner did not
14 appeal the fee waiver decision to LUBA within 21 days of any of those dates,
15 the city argues that petitioner’s appeal of the fee waiver decision was untimely
16 filed.

17 We reject the city’s arguments asserting that petitioner’s appeal was
18 untimely filed. ORS 197.830(9) requires a notice of intent to appeal be filed not
19 later than 21 days after the date the decision sought to be reviewed becomes

⁵ ORS 197.830(9) provides, in part: “A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.”

1 final. ENB 13.25 provides that the decision of the Director of BDS to waive
2 fees is “final” in that there is no local right of appeal. However, for purposes of
3 LUBA review and jurisdiction, a local decision “becomes final when it is
4 reduced to writing and bears the necessary signatures of the decision maker(s),
5 unless a local rule or ordinance specifies that the decision becomes final at a
6 later date, in which case the decision is considered final as provided in the local
7 rule or ordinance.” OAR 661-010-0010(3). ““Final decision maker” means the
8 governing body, or a person, commission or other entity authorized by the
9 governing body, that makes the final decision.” OAR 661-010-0010(4).

10 As we understand it, the city contends that the staff intake form marked
11 received on January 12, 2018, is the “final decision” because it bears the name
12 and handwriting of BDS staff. The city asserts that the city council authorized
13 the BDS Director to make the final decision on fee waiver requests and that the
14 BDS Director delegated that decision-making authority to staff (at least in this
15 instance).

16 While the appeal form indicates that the fee was waived, the appeal form
17 does not “bear[] the necessary signatures of the decision maker[.]” OAR 661-
18 010-0010(3). Even assuming without deciding that the city council’s delegation
19 to the BDS Director in PCC 33.750.020 of authority to determine rules and
20 procedures for waiver of fees included authority for the BDS Director to
21 delegate the fee waiver decision to staff, the appeal form was not signed.
22 Record 3737. We reject the city’s contention that the “Received By” entry,

1 which is a printed staff name, is sufficient to finalize the decision for purposes
2 of LUBA's review. We conclude that the decision challenged in LUBA No.
3 2018-017 was not "final" for purposes of our review until the city council
4 decision on the appeal became final. Petitioner's appeal was filed within 21
5 days of that date, and therefore, the appeal of the fee waiver decision was
6 timely filed.

7 In sum, the fee waiver decision is subject to LUBA review because
8 petitioner's appeal was timely filed, the decision concerns the application of a
9 land use regulation, and review of the decision is not excepted from LUBA's
10 jurisdiction.

11 The city's motion to dismiss is denied.

12 **RECORD OBJECTIONS**

13 **A. Petitioner's Record Objections**

14 Petitioner asserts that the city improperly omitted from the record the
15 following emails: (1) the January 15, 2018 email from Griffith to the BDS
16 Director and (2) the January 19, 2018 email chain including an email from
17 petitioner's counsel to the BDS Director and an email from the BDS Director to
18 planning staff.

19 Petitioner argues that the BDS Director was the decision maker for the
20 fee waiver request and the disputed emails were placed before the BDS
21 Director. OAR 661-010-0026(2)(a) (providing a basis for a record objection on
22 the ground that "[t]he record does not include all materials included as part of

1 the record during the proceedings before the final decision maker”); OAR 661-
2 010-0025(1)(b) (providing that the record shall include all materials “placed
3 before, and not rejected by, the final decision maker, during the course of the
4 proceedings before the final decision maker”).

5 The city responds, and we agree, that the disputed emails were never
6 placed before the city council and thus are not part of the record in LUBA No.
7 2018-016. With respect to LUBA No. 2018-017, the city argues that the staff
8 approved the fee waiver as the BDS Director’s delegate. The city relies on the
9 appeal form marked “Received By” a BDS staff person on January 12, 2018, at
10 2:59 p.m. Record 3737.

11 Petitioner might assert on the merits that the appeal form alone is legally
12 insufficient to support the city council’s determination that the appeal was
13 perfected.⁶ However, for purposes of petitioner’s record objection, evidence
14 supports the city’s assertion that the fee waiver decision was made by planning
15 staff. No party points to any evidence in the record that the BDS Director
16 personally decided intervenor’s fee waiver request.⁷ Therefore, the disputed
17 emails were not placed before the final decision maker and are not part of the
18 record.

⁶ Respondent argues that a fee waiver decision is not a jurisdictional prerequisite under the PCC. Motion to Dismiss 9. The issue is not adequately briefed at this stage in the appeal and we do not address it here.

⁷ No party has moved the Board to take evidence not in the record under OAR 661-010-0045.

1 The disputed emails are not part of the record in either of the
2 consolidated appeals. Petitioner's record objections are denied.

3 **B. Intervenor's Record Objections**

4 Intervenor objects to asserted omissions and reproduction qualities.

5 **1. First Objection**

6 Intervenor objects that the first attachment to record No. 5, Item H.57,
7 which is listed in the record table of contents as "Neighborhood Map," should
8 instead be listed as "Map of Neighbors with Ground Water Problems," because
9 that is what the map is titled in the record. OAR 661-010-0025(4)(a)(B)
10 requires the record begin with a table of contents "listing each item contained
11 therein." That rule requires the local government to list the items in the record.
12 The record conforms to the requirements of OAR 661-010-0025(4).
13 Intervenor's first record objection is denied.

14 **2. Second Objection**

15 Intervenor objects that multiple items in the record were incorrectly
16 reproduced because pages are missing, color items are reproduced in black and
17 white, in certain color reproductions the "balance" of color is different from the
18 original document, and a PowerPoint presentation should be reproduced in the
19 record in digital format rather than a portable document format (PDF).

20 The city responds that the item which intervenor objects is missing pages
21 is a complete reproduction of what was submitted into the local record and thus
22 the "missing" pages were never "placed before" the city council and are not

1 part of the record. OAR 661-010-0025(1)(b). Intervenor has not established
2 that the “missing” pages were submitted into the local record. The city also
3 responds that the disputed color reproductions either were submitted to the city
4 in black-and-white or were reproduced in color to the best of the city’s
5 capability. Based on the city’s response, the objection is denied. Finally, the
6 city responds that it did not retain a digital version of the PowerPoint
7 presentation in its records and cannot reproduce it. We agree that the city is not
8 required to include the original digital presentation. Intervenor’s second record
9 objection is denied.

10 **BRIEFING SCHEDULE**

11 The record is settled as of the date of this order. The petition for review
12 shall be due 21 days after the date of this order. The response briefs shall be
13 due 42 days after the date of this order. The final opinion and order shall be due
14 77 days after the date of this order.

15 Dated this 12th day of October, 2018.
16
17
18
19

20 _____
21 H. M. Zamudio
Board Member