

October 14, 2012

MEMORANDUM FOR THE BOARD OF THE WEST BEACH ROAD ASSOCIATION

Subject: Status of State Laws requiring Reserve Accounts and Reserve Studies (RCW 64.38.065 – 090)

1. As of this date, the State Department of Health (DOH) has not held hearings on draft additions to the Washington Administrative Code (WAC) that would put into place rules for interpreting and enforcing state laws passed last year which require that, after January 1, 2012, home owners' associations "with significant assets" prepare and update a "Reserve Study" of the "common elements" of their association-owned potable water systems that will require major maintenance, repair or replacement within 30 years. Further, that this initial Reserve Study be based on a "visual site inspection conducted by a reserve study professional" and that it be updated annually – and, further still, that "at least every three years" the study be updated and prepared "based upon a visual site inspection conducted by a reserve study professional."

2. The same state laws "encourage" associations to establish a "Reserve Account with a financial institution" to fund the maintenance, repair and replacement of the common elements of their potable water systems. This account is to apply only to "major maintenance, repair and replacements costs whose infrequent and significant nature makes them impracticable to be included in an annual budget."

3. Our WBRA has, for many years, funded and maintained a "recapitalization" line item in our annual budget and has kept the monies so funded in the association's deposit account at a local financial institution. The line item goal was established by a study and these monies are reserved for eventual replacement of the common elements of our potable water system while operating funds are spent on maintenance and emergent repairs. Annual budget deliberations effectively update the recapitalization line item. With two exceptions, therefore, it could be argued that the WBRA has acted consistently with the intent of the new state laws. Moreover, five-year sanitary surveys conducted by the DOH confirmed that our association has conformed to existing WAC rules – particularly the Small Water Systems Management Plan required by WAC 246-290-105 – in regard to planning for the eventual replacement of common elements. One exception is that our recapitalization fund was not based upon a visual site inspection conducted by a reserve study professional – nor has the fund been updated at three year intervals by a reserve study professional. The other exception is that our recapitalization fund is included in our annual budget.

4. The absence of new WAC rules interpreting and enforcing the state laws notwithstanding, our association would do well to engage a reserve study professional as soon as the DOH establishes that credential and have a Reserve Study prepared based on a visual site inspection conducted by that individual. In the meantime, our association would also do well to update

the original recapitalization study and, if appropriate, adjust the goal of the budget line item established for that purpose. It should not be necessary to separate the existing recapitalization fund from our annual budget at least until the Reserve Study is in hand.

James M. Patton, Member