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MEMORANDUM

TO : Board of Directors
Greatrock North Water and Sanitation District (the "District")

FROM: **WHITE BEAR ANKELE TANAKA & WALDRON**

RE : Regulation of Marijuana on Special District Property

DATE : November 4, 2014

I. ISSUE PRESENTED

This memorandum discusses the impact of Amendment 64 to the Colorado Constitution (Colo. Const. Art. XVIII Sec. 16, hereinafter "Amendment 64" or the "Amendment") on special districts and what options are available to special districts to regulate the possession, use, display, transfer, distribution, sale, transportation or growing of marijuana on special district property.

II. SHORT ANSWER

Generally, Amendment 64 decriminalizes the possession of less than one ounce of marijuana by persons 21 years of age or older for private use only.[1] The Amendment does not, however, permit marijuana consumption or growing that is conducted "openly and publicly,"[2] and the Amendment contains an explicit provision allowing entities who occupy, own, or control property to regulate the "possession, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property."[3] Subject to any future rules, regulations, or legal interpretations from the state or federal governments, the attorney general, or the courts, a special district has authority to regulate, including prohibit completely, marijuana possession, use, display, transfer, distribution, sale, transportation, or growing on or in any property owned, controlled or occupied by that special district.[4]

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[1] *See* Amendment 64 at § (3).
[2] *Id.* at § (3)(d).
[3] *Id.* at § (6)(d).
[4] *Id*

III. IMPACT ON SPECIAL DISTRICTS

a. Consumption and Growing "Openly and Publicly" are Prohibited.

Although Amendment 64 decriminalizes marijuana in many respects, its consumption or growing are still completely prohibited when it is done "openly and publicly or in a manner that endangers others."[5] Personal marijuana plant growing may only take place "in an enclosed, locked space," leaving few places even within a person's private property where marijuana plant growing is permitted.

As public entities, property owned, occupied, or controlled by a special district is open to the public and any consumption or growing of marijuana on such property would be considered "openly and publically" and does not need to be independently regulated by the special district. Without any additional regulation such activity is prohibited by Colorado law. However, a special district may choose to further regulate the open and public possession, consumption and growing of marijuana on its property by adopting a policy imposing prohibitions and/or limitations and establishing fines and enforcement remedies, as discussed below.

b. Property Owners May Prohibit and/or Regulate Marijuana Related Activities on Their Property.

Section 6 of the Amendment provides: "nothing in this section shall prohibit a person, employer, school, hospital, detention facility, corporation or any other entity who occupies, owns or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property."[6]

Special districts are permitted to own, occupy and control property within and without their boundaries, including clubhouses, green belts, parks, golf courses, etc. Therefore, a special district owning, occupying or controlling property can prohibit and/or regulate the "possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on" that property.[7] It should be noted, however, that a special district does not have the legal authority to prohibit or regulate marijuana related activity on a homeowner's private property.

IV. REMEDIES AVAILABLE TO SPECIAL DISTRICTS

a. Adopt a Policy by Resolution: A special district, through its board of directors, may prohibit or regulate marijuana possession, consumption, use, distribution, display, transfer, distribution, sale, transportation, or growing on property it owns, occupies or controls by adoption of a policy laying out the specific regulation or prohibition. A policy may include a schedule of fines or penalties for persons who violate the policy or it may permit the special district to revoke privileges from persons who violate the policy. For example, if a person possesses marijuana at the special district pool area the special district could impose a fine or revoke access to the pool area for a specific amount of time.

b. Law Enforcement: If a person is "openly and publicly" consuming marijuana the special district may contact law enforcement and ask that they assist in managing the situation. In addition, if homeowners are growing marijuana plants "openly and

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[5] *Id.* at § (3)(d).
[6] *Id.* at § (6)(d).
[7] *Id.*

publicly," or in an area that is not an "enclosed, locked space," they are in violation of Colorado law and law enforcement should be contacted. However, depending upon the jurisdiction, law enforcement may or may not give priority to marijuana related incidences occurring only on a person's private property.

c. **Criminal Code:** Lastly, a special district may adopt rules and regulations, pursuant to § 18-9-117(1), C.R.S., as are reasonably necessary for the administration, protection, and maintenance of public property under its control, management or supervision regarding, amongst other things, prohibition of activities or conduct on public property which may be reasonably expected to substantially interfere with the use and enjoyment of such places by others or which may constitute a general nuisance. Notice of the limitations and prohibitions must be prominently posted at all public entrances to such property or be given by an officer or agent of the special district. Pursuant to § 18-9-117 (3)(a) and (b), any violation of the limitations and prohibitions is unlawful and violators will be subject to criminal penalties enforceable by authorized law enforcement officers.

V. CONCLUSION

Amendment 64 contains an explicit provision allowing property owners to regulate or prohibit "possession, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property" on property they own, occupy, or control.[i] Special districts may regulate or prohibit such marijuana related activities on any property they own, occupy or control.

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[i] *Id.* at § (6)(d).