

**Tim Lagerborg**

Board Member, Grand Lake Estates HOA

April 28, 2025

**RECEIVED**  
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Grand Lake Planning Commission

Town of Grand Lake

1026 Park Avenue

Grand Lake, CO 80447

**Re: Opposition to Chapdelaine Shoreline Variance Request – 300 Lakeside Drive**

Dear Members of the Planning Commission,

Thank you for your continued dedication to the stewardship of Grand Lake's resources and property matters. As a board member of the Grand Lake Estates Homeowners Association (GLEHOA), I appreciate your commitment to balancing property rights, safety, and environmental protection. We look forward to working collaboratively with the Commission on future projects and appreciate the opportunity to provide input on this important matter.

I write to respectfully oppose the shoreline variance request submitted by Mark and Linda Chapdelaine for 300 Lakeside Drive. This proposal raises significant concerns regarding private property rights, operational safety, and federal permitting compliance. It also reflects a fundamental misapplication of navigable waters doctrine in the context of our privately owned marina channel.

**1. History of Prior Dock Proposals**

The Chapdelaines have submitted multiple dock proposals over several years-each ultimately unsuccessful due to conflicts with GLEHOA's property rights and permitting requirements:

- **2017:** Permit from the Town for a boat slip was halted after GLEHOA raised encroachment concerns.
- **2018–2019:** Attempted permit extension failed due to unresolved boundary conflicts.
- **2022:** Shoreline variance for a cantilevered dock was approved by the Town but denied by federal agencies due to encroachment concerns raised by GLEHOA.

Each proposal has failed because the Chapdelaines have not secured GLEHOA's consent or satisfied the requirements under federal and private property regulations. The current request raises the same unresolved issues.

## **2. GLEHOA Ownership of Marina Channel**

GLEHOA holds legal title to both the marina and the submerged lands beneath its navigational channel, as confirmed by deed records and Special Use Permit SUL450 issued by the U.S. Forest Service (USFS). This exclusive ownership grants GLEHOA full authority to manage access and usage within the channel for the benefit of our members.

The proposed cantilevered dock-regardless of whether it physically crosses the property line-would enable the Chapdelaines to dock a boat within GLEHOA's privately owned channel. This constitutes unauthorized use of our submerged lands and an infringement on our exclusive rights as both landowners and federal permit holders.

## **3. Clarification on Navigable Waters Doctrine**

At the March 19, 2025 meeting, it was suggested that navigable waters doctrine might grant public access or override private property rights in this instance. This is a misunderstanding.

### **Navigable-in-Fact vs. Legally Navigable**

- **Navigable-in-fact** means a water body is physically capable of floating a boat.
- **Legally navigable** (for title and public access) is a distinct status, determined by whether a waterway was used for commerce at statehood. In Colorado, only the state can assert this, and no such finding has ever been made for this channel.

### **Colorado Law**

- The Colorado Supreme Court (*People v. Emmert*, 1979) held that the public status of water does not grant the public a right to use privately owned beds and banks.
- The owner of the streambed (here, GLEHOA) controls access and use, even for floating or boating.
- *Hill v. Warsewa* (2023) reaffirmed that only the state, not private parties, can assert navigability for title.

### **Driveway Analogy:**

Just as a car can physically drive onto a private driveway, that does not make the driveway public. The ability to float a boat in the channel does not make it public or grant docking rights.

## **4. Why the Channel and Marina Are Legally Private**

- **Artificial Origin:** The channel and marina are artificial, created by altering private uplands-not natural streams. Under Colorado law, beds of such waterways remain private.
- **Ownership and Maintenance:** GLEHOA's deeded ownership and responsibility for maintenance further confirm the private character.
- **No Legal Designation for Public Use:** No court or agency has ever declared these waters navigable for title or public access. Federal law (*Kaiser Aetna v. U.S.*, 1979) holds that even if a private waterway becomes navigable-in-fact, public access cannot be imposed without compensation.

## **5. Special Use Permit and Federal Oversight**

GLEHOA operates under Special Use Permit SUL450 from the USFS, which:

- Strictly limits use to GLEHOA members.
- Mandates compliance with safety and environmental standards.
- Requires that any non-member use or new construction be authorized by GLEHOA and the USFS.

Permitting non-member use-such as docking by the Chapdelaines-would violate the permit's terms, introduce safety risks in a narrow, high-traffic channel, and jeopardize GLEHOA's standing with the USFS.

## **6. ANRA Jurisdiction and Private Property Rights**

While the Arapaho National Recreation Area (ANRA) and USFS oversee environmental quality and navigation, their authority does **not** extend to overriding private property rights. ANRA

cannot reclassify private lands for public use without the owner's explicit consent. Previous Chapdelaine proposals have been denied for this reason.

## **7. Operational and Safety Concerns**

Even if technically confined to their property, the proposed dock would still facilitate boat mooring within GLEHOA's channel, creating these risks:

- **Navigation Obstruction:** The marina channel is narrow and serves as the primary access point for members and emergency vessels. A docked boat would obstruct safe passage and create congestion.
- **Hazardous Precedent:** Approval could set a precedent for further encroachments by non-members, threatening both safety and the operational integrity of our private marina.

## **8. Failure to Meet Variance Criteria**

The Chapdelaines' request fails to meet the legal criteria for hardship under Colorado law and Grand Lake's municipal code:

- **No Unique Hardship:**  
Colorado law requires applicants to prove "practical difficulty or unnecessary hardship" due to exceptional property characteristics (such as size, shape, or topography). The Chapdelaines' claim of hardship-lack of dock access-is self-created and stems from bordering private property that they do not have access to. The inability to dock is not a unique hardship, but a foreseeable result of owning a lot that borders private property to which the applicant has no legal right of access.
- **Misrepresentation of Boundaries:**  
Their proposal extends their boundary into GLEHOA's channel, violating Colorado trespass law and federal permit terms. (See attached diagram)
- **Safety and Operational Risks:**  
The narrow channel cannot safely accommodate a docked boat; non-member docking violates the USFS permit.

- **Legal Precedent:**

Colorado courts reject public access claims to privately owned waterways. Only the state can assert navigability for title (*Hill v. Warsewa*, 2023).

- **Disregard for Neighborhood Rights:**

Granting this variance, especially with overwhelming neighborhood opposition, **disregards the private property rights of 144 property owners.**

## **Conclusion and Recommendation**

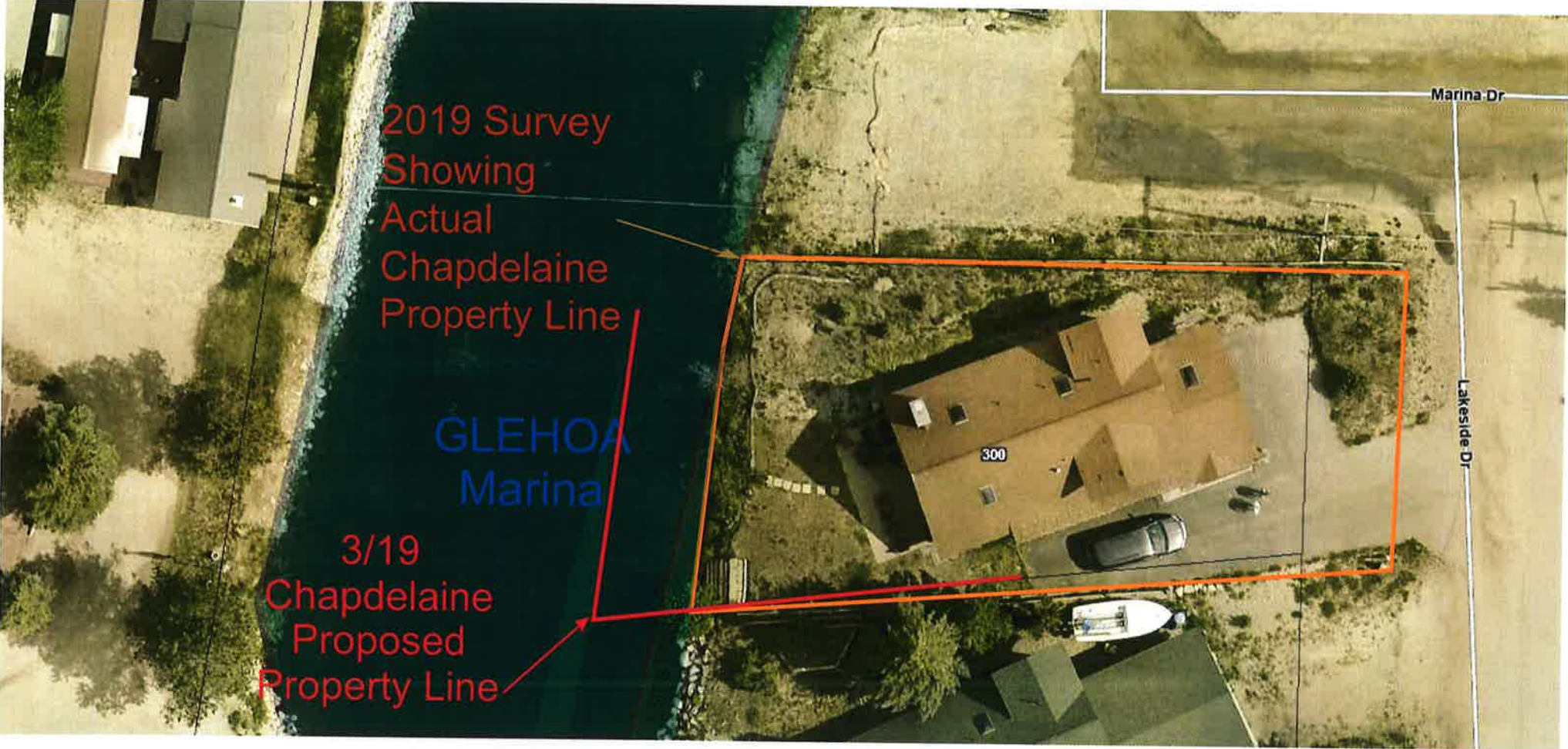
The Chapdelaines' hardship is self-inflicted and not inherent to their property. Granting this variance would illegally transfer control of GLEHOA's channel, violate federal permits, and endanger public safety. The Planning Commission must deny the request to uphold property rights and legal integrity.

GLEHOA remains committed to working in partnership with the Town to support responsible developments and the continued vitality of our community.

Sincerely,

**Tim Lagerborg**

Board Member, Grand Lake Estates HOA



Arial view of the Chapdelaine property with the Chapdelaine proposed property line and the surveyed property line.