

# CITY OF NORTH MYRTLE BEACH CANAL DREDGING PROJECT

## FAQ's

*What is the canal dredging project?*

The canal dredging project is a public works project the City is undertaking to deepen certain canals in East Cherry Grove. A copy of the canals to be dredged is shown as the shaded area on the attached map of East Cherry Grove.

*Will the dredging project harm any seawalls, private docks or marsh vegetation?*

No. The footprint of the dredging project as permitted by South Carolina Department of Health and Environmental Control is limited in such a manner to avoid harming seawalls, docks or marsh vegetation.

*What is required to be done before the project can be started?*

The City has already obtained a dredging permit from the SCDHEC. The City will need to obtain another permit from the U.S. Army Corps of Engineers. In addition, the City will need to establish a special purpose district and sell bonds to pay for the costs of the project. Finally, the City will have to complete the necessary process to contract with a dredging contractor.

*Are there any obstacles to obtaining a permit from the Corps of Engineers or approval by the bond underwriters?*

The Corps and the bond underwriters have not commented on the proposed project at this time. However, the City is aware of a claim to legal title to some of the canals from East Cherry Grove Realty Company, LLC. Until that claim is resolved to the satisfaction of the Corps of Engineers and the bond underwriters, they are not likely to give the necessary approvals that would allow the City to start the project.

*What is the City doing to resolve East Cherry Grove Realty Company, LLC.'s claim to the property?*

The City has filed a declaratory judgment action in State court. In addition, East Cherry Grove Realty Company, LLC. has filed a declaratory judgment action and it has filed a claim for inverse condemnation in State court. The City is seeking to expedite a hearing on the claims and to consolidate the cases. In the meantime, the City is seeking to discover the basis of East Cherry Grove Realty Company, LLC's claim. The City may meet with the owners of East Cherry Grove Realty Company, LLC in a formal mediation process to resolve the litigation at early stage.

*How long will it take to resolve the property claims if the parties cannot resolve their dispute?*

That's hard to say. The normal time for such a matter to be heard in court is approximately one year. The City has moved to expedite the case in Court and may be able to cut that time in half if the Court grants the motion to expedite. If the case is decided in court either party may appeal which could add additional time to the process.

*What is the City's goal in the litigation?*

The City believes that the area it seeks to dredge is owned by the State of South Carolina and that the dredging operation will not occur on any property owned by East Cherry Grove Realty Company, LLC or other private property owners. In addition the City believes it has other legal reasons for asserting the right to dredge the canals. For example, the City also believes the canals were conveyed to the public through public dedication. The City needs to have a court declare that legal title to the property is such that the US Army Corps of Engineers will issue a permit to dredge the canals and the bond underwriters will provide the necessary funds to fund the costs of the project.

*Why doesn't the City just take the canals through eminent domain?*

The City has done an exhaustive title search of the canals to be dredged and the City believes the State of South Carolina owns all of the property to be dredged. Under eminent domain law, a local government cannot condemn property already owned by another governmental entity such as the State. Eminent domain statutes allow only private property to be taken. The City cannot find any private property actually owned by East Cherry Grove Realty Company, LLC, that will be taken in the dredging project. The City cannot condemn a parties' claims to property. The City can only condemn a private property owner's fee simple title interest in property. The cutting off of legal claims to property is accomplished through a declaratory judgment action like the one already filed by the City.