

North Carolina Does Not Track Lands Submerged under Navigable Rivers or Know the Extent of Private Claims

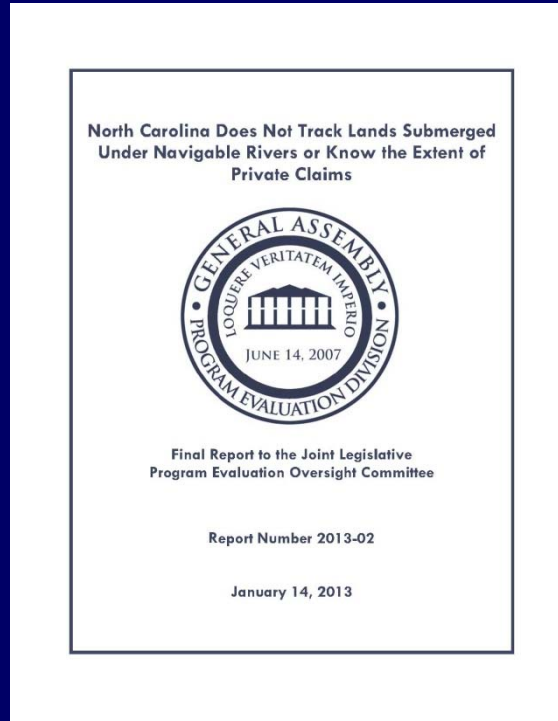
A presentation to the
Joint Legislative Program Evaluation Oversight Committee

January 14, 2013

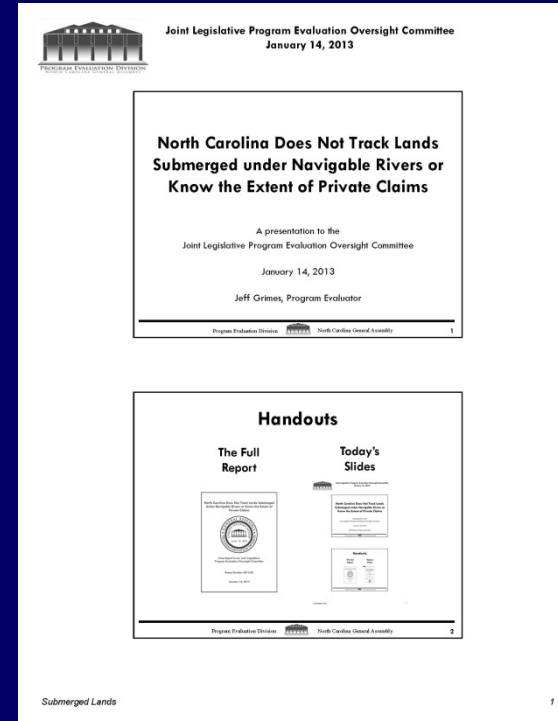
Jeff Grimes, Program Evaluator

Handouts

The Full Report



Today's Slides



Evaluation Team

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Study Direction

- Session Law 2012-194
- Study the inventory of all state-owned lands and the issue of public ownership of lands submerged under navigable rivers in the State

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Research Questions

- What are submerged lands in North Carolina?
- How do North Carolina and other states track and manage submerged lands?
- How could North Carolina improve management of lands submerged under navigable rivers?

Data Sources

- North Carolina General Statutes and case law
- Interviews with state agencies, legal experts, and other stakeholders
- State property inventory
- Survey of selected states
- Legal memo from PED counsel on state ownership of submerged lands

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Submerged Land Can Include both Riverbeds and Coastal Waters



Coastal Waters near Morehead City



Neuse River

Overview

- Lands submerged under navigable waters are subject to State ownership
- The State does not have a list of all conveyances of submerged lands that occurred in the past
- The Department of Administration (DOA) does not have a comprehensive inventory of state-owned submerged lands

Overview

- DOA's management of submerged lands is largely passive
- DOA does not require easements or leases for several structures and activities that utilize submerged lands
- Options exist for North Carolina to more actively manage its submerged lands and resolve ownership

Background: What are Submerged Lands in North Carolina?



Cape Fear River

History

- North Carolina gained ownership of its submerged lands by taking them from King George III
- The State owns those submerged lands that were navigable at independence
- North Carolina has the sovereign right to define navigability

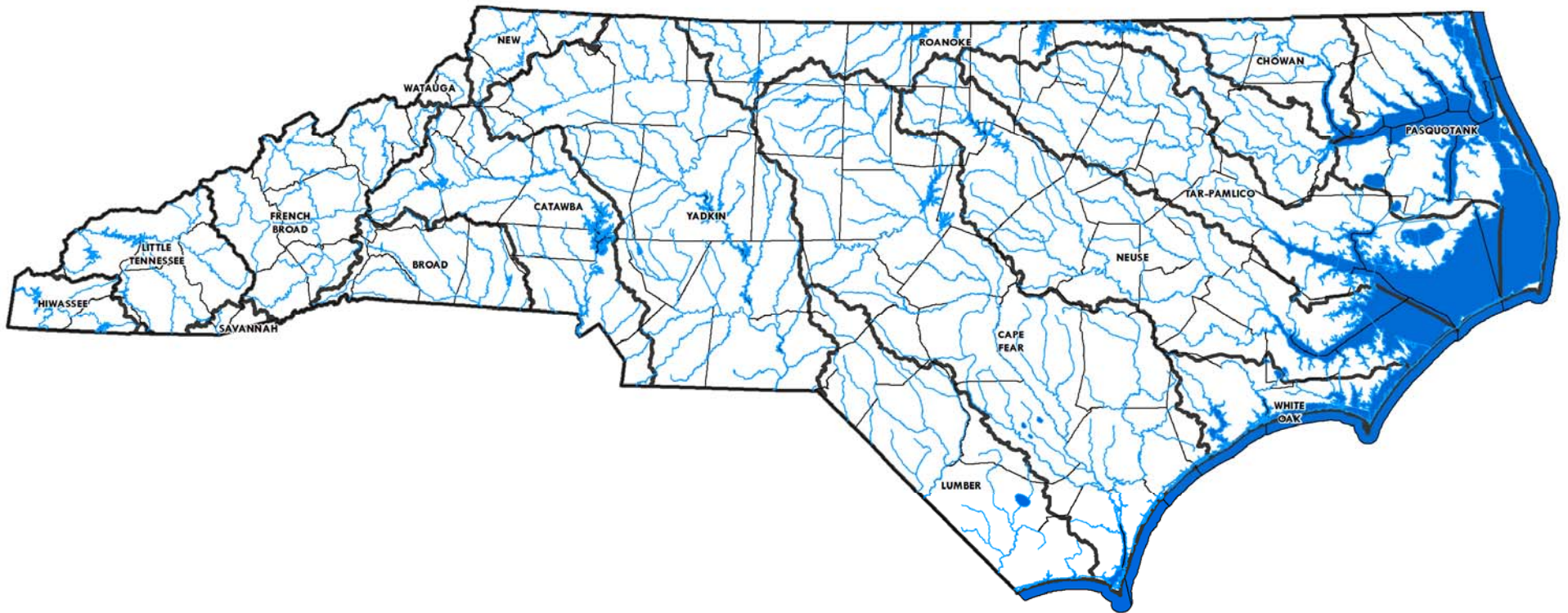
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Navigability for Purposes of Ownership

- Depends on whether the waterway could have been used for commerce and travel by useful vessels
- “Travel by useful vessels” has included one-person craft with shallow drafts and “commerce” has included floating logs one-way down a stream

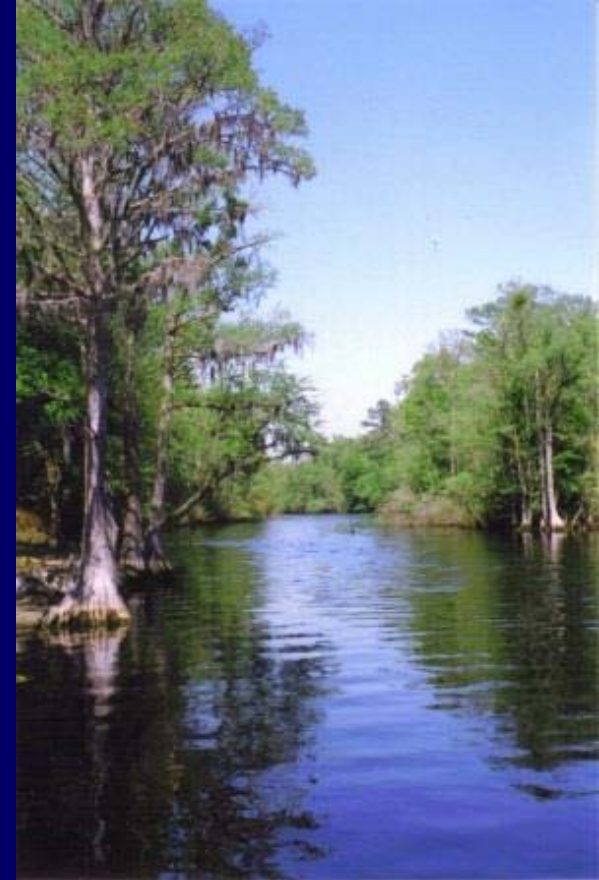
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Major Rivers, Lakes, and Coastal Waters of North Carolina



Public Trust Rights

- Public trust rights are the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the waters of the State
- Test for navigability for public trust rights is different



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Lumber River

State Conveyance of Submerged Lands

- Submerged lands cannot be adversely possessed or sold
- No list of conveyances
- Extent to which private parties may have legitimate claims is unknown

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How Do NC and other States Track Submerged Lands?

- DOA has statutory duty to prepare and keep current an inventory of all state-owned land
- DOA does not inventory or track submerged land ownership, though 24 assets are in the database
- DOA justifies the lack of an inventory because it treats lands submerged under navigable rivers as sovereign land

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Easements on Submerged Land

DOA tracks two types of easements:

Type	Number of Easements	Fee for Easement
Coastal submerged land easements	116	Varies based on an acreage formula
Utility crossing easements	235	\$250 per easement
Total easements	351	

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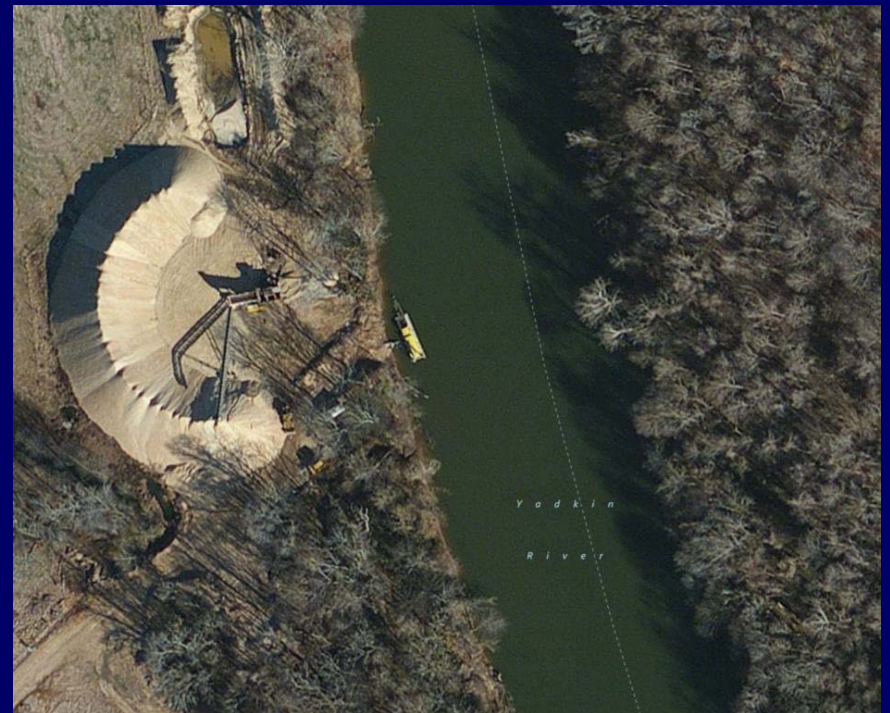
DOA's Management Approach Is Largely Passive

- DOA has statutory authority to manage and control submerged lands
- DOA does not issue leases or easements for dams, most water intake or outfall structures, or other structures
- DOA does not lease or convey minerals found on or under riverbeds

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DENR Has Regulatory Authority for Certain Activities on Riverbeds

- North Carolina Dam Safety Law
- North Carolina Mining Act of 1971
- DENR's regulatory authority not related to ownership of riverbeds
- Neither DOA nor DENR verify ownership for ongoing activities



Sand Dredging on the Yadkin River

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Others States' Tracking of Submerged Lands

- 10 of 12 other original colony states do not specifically inventory or otherwise track ownership of submerged lands
- Each state approaches submerged lands differently

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North Carolina Coastal Submerged Land Claims Process

- Required private parties to register claims to submerged land in 25 coastal counties
- Claims not registered were declared null and void
- Claims registered were required to demonstrate an unbroken chain of title to original instrument

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North Carolina Coastal Submerged Land Claims Process

- 14,566 claims
- 256 claims recognized subject to public trust rights of the State
- Cost over \$4.1 million to resolve claims over 19-year period

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How Could North Carolina Improve Management of Lands Submerged Under Navigable Rivers?



French Broad River

Require DOA to Improve Its Management and Tracking

- Create a field in state property database that specifically tracks submerged lands ownership and easements
- Describe utility easements through rule-making, specifying the easement process and fee

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Require DOA to Improve Its Management and Tracking

- Work with DENR to develop procedures for conveying or leasing mineral deposits on submerged lands
- Require easements for all new structures built on submerged lands

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Resolve Private Ownership Claims

- The General Assembly could use the coastal submerged land claims process as a model
- Require private parties to register potential claims in 75 counties
- Could give two years to file claims
- Claims not registered declared null and void

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Resolve Private Ownership Claims

- Would cost \$600,000 for first year of operation and \$550,000 per year until claims resolved
- Time frame to resolve claims unknown
- The General Assembly would have to weigh the costs and benefits

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Summary

- North Carolina owns lands submerged under navigable rivers
- North Carolina does not track ownership or know the extent of private claims
- DOA grants easements on submerged lands but does not require easements for many structures or activities

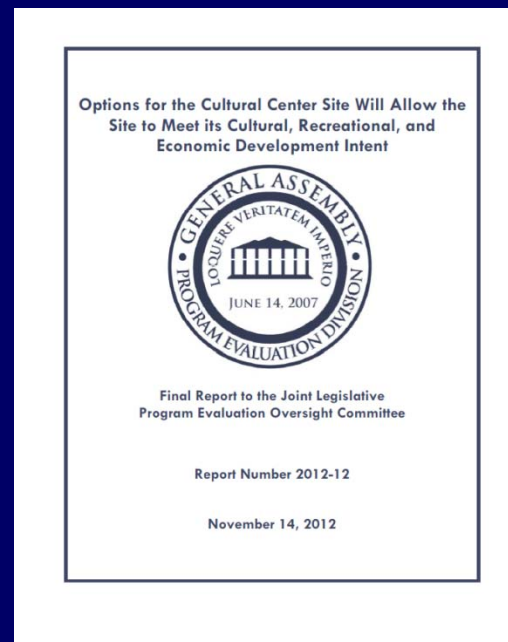
Summary

- The General Assembly could require DOA to improve its management of submerged lands
- The General Assembly could use the coastal process as a model to resolve private ownership claims

Legislative Options

- Accept the report
- Refer it to any appropriate committees
- Instruct staff to draft legislation based on any of the options discussed in the report

**Report available online at
www.ncleg.net/PED/Reports/reports.html**



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