



The Need for a Culturally Relevant Assessment of the Atlantic Coast Pipeline: Summary and Recommendations

Report from a panel of Lumbee citizens
Presented to the Health Committee of the Lumbee Tribe of North Carolina

November 6, 2017
Revised: November 19, 2017



Overview and Purpose of the Panel

The Health Committee of the Lumbee Tribe of North Carolina convened on October 5, 2017 to hear from a panel made up of six Lumbee citizens. Panelists included tribal members who are experts on topics relevant to the proposed Atlantic Coast Pipeline, tribal members who live and work near the proposed route, and tribal members who have experience living near existing pipelines and pipeline infrastructure in Robeson County. The panelists were:

Dr. Cherry Beasley (Department of Nursing, UNC Pembroke)

Ms. Donna Chavis (Center for Community Action, Lumberton, NC)

Dr. Ryan Emanuel* (Department of Forestry & Environmental Resources, NC State Univ.)

Mr. Robie Goins (EcoRobeson, Robeson County, NC)

Dr. Mary Ann Jacobs (Department of American Indian Studies, UNC Pembroke)

Mr. Eddie Moore (Farmer, Robeson County, NC)

The panel met with the Health Committee following a meeting on October 2, 2017 with representatives from Dominion Energy, who gave a presentation on potential benefits of the proposed pipeline. As lead developer on the project, Dominion Energy, is involved in a major public relations campaign aimed at winning endorsements from communities along the pipeline route. Part of the campaign involves presentations to local governments and organizations that highlight benefits of the pipeline while downplaying or ignoring disadvantages. Thus, the October 2nd, presentation by Dominion failed to address serious issues related to the Lumbee Tribe's culture, environment, economy, wellness, and inherent sovereignty.

Federal regulators are normally responsible for providing unbiased reviews of projects such as the Atlantic Coast Pipeline. However, in this case, federal regulators ignored the project's impacts on Native American communities. Specifically, the Federal Energy Regulatory Commission (FERC) failed to acknowledge the project's highly disproportionate impacts on tribal communities, including the Lumbee Tribe. FERC also ignored requests for formal, government-to-government consultation with the Lumbee Tribe and other tribal governments, including an invitation by the Commission of Indian Affairs to attend a meeting of tribal leaders in Hollister, NC on August 9, 2017. For these reasons, the panel concluded that FERC's environmental review and official decision do not address tribal interests or concerns. The panel also noted that FERC has come under increased criticism, nationally, as a body that simply "rubber stamps" pipeline proposals from industry¹.

With neither the developers nor FERC able to assess pipeline impacts in a way that is relevant to tribal communities, the panel took on the role of highlighting culturally-relevant impacts that warrant further investigation in a full cultural impact assessment. This document summarizes impacts of relevance to the Lumbee Tribe, and it contains conclusions and recommendations discussed during the October 5th, 2017 meeting between the citizen panel and the tribal council.

*Contact for more information: ryan_emanuel@ncsu.edu

¹ See the 2017 report by the Center for Public Integrity, a Pulitzer Prize-winning organization that investigated FERC. <https://www.publicintegrity.org/2017/07/17/20982/natural-gas-building-boom-fuels-climate-worries-enrages-landowners>

Introduction

“There is more than one way to own a thing. Some of the most precious things were not bought and paid for with money.” - Ruth Revels, Lumbee²

The panel’s report is based on the fact that indigenous peoples understand and relate to the world differently than do most western governments and corporations. As indigenous peoples, we believe that lands and waters connected to the Lumbee River are sacred. For many generations, the river and its tributary swamps have held together our communities and our collective history, culture, and identity. The swamps provided a barrier that protected us from outsiders and sheltered us from the onslaught of colonization. Our heroes made their homes and took refuge there. Today, these places help us maintain our identity as Lumbee people, and they restore our health and wellbeing. For all of these reasons, our ancestral lands and waters are precious.

Government regulators and energy corporations often do not understand or share these indigenous values. For example, FERC’s review of the Atlantic Coast Pipeline did not incorporate Lumbee perspectives, nor did it involve the Lumbee Tribe in the decision-making process in any meaningful way. The developers of the Atlantic Coast Pipeline did not seek the opinions or advice of Lumbee people during the process of planning their pipeline. These omissions are significant given the fact that the Atlantic Coast Pipeline will cross miles of our ancestral lands and will impact a highly disproportionate number of Lumbee people, now and for generations into the future. As Lumbee people, we are responsible for weighing proposals based on their cultural impacts, which include impacts on our environment, our health and wellbeing, and our economies, in addition to impacts on our core values as the indigenous people of this place. These conclusions and recommendations are intended to help guide the Lumbee Tribal Council make wise decisions for this generation and for the next seven generations.

The following sections summarize the panel’s five major findings and eight major recommendations. Detailed panel findings provide additional information and support, and further readings provided at the end of the report.

Summary of Major Findings

- I. The Lumbee Tribe has been excluded from the federal decision-making process for the Atlantic Coast Pipeline.
 - a. Federal regulators ignored the disproportionately large number of Lumbee tribal members and other Native Americans living along the proposed pipeline route.
 - b. Federal regulators failed to consult with the Lumbee Tribe and other tribal nations during their formal review of the project.
 - c. Regulators’ actions run against guidance from the Environmental Protection Agency, the Advisory Council on Historic Preservation, and the UN Declaration on the Rights of Indigenous Peoples.
 - d. The federal government’s failure to acknowledge adverse impacts may limit the Lumbee Tribe’s ability to receive fair and just redress or mitigation for cultural or environmental damages. In particular, without proper acknowledgment of impacts, developers may attempt to reframe mitigation as a “goodwill” gesture.

² in Dial and Eliades, *The Only Land I Know: A History of the Lumbee Indians*, 1975.

- II. The Atlantic Coast Pipeline is part of a larger system of infrastructure that promotes the continued use of unsustainable energy, and the cumulative impacts of this system on Lumbee people, including climate impacts, have not been considered by federal or state regulators.
 - a. The historic community of Prospect would be drastically altered by the construction of proposed industrial facilities related to the pipeline, including a 350'-tall telecommunications tower and a metering and regulating station.
 - b. Construction activities would excavate or bore through several culturally-important tributaries of the Lumbee River (including their swamps). These are some of the last remaining undisturbed landscapes in Robeson County, and the Lumbee Tribe has not been involved in reviewing impacts of construction activities.
 - c. Federal regulators did not review the long-term impacts of continued greenhouse gas emissions from projects such as the Atlantic Coast Pipeline. These impacts include climate warming that will have negative impacts, overall, on Lumbee people and our territory.

- III. The adverse economic impacts of the Atlantic Coast Pipeline would likely outweigh any economic benefits, and adverse impacts would fall disproportionately on Lumbee people.
 - a. One-time payments to landowners for easements are small in comparison to adverse property impacts, which include lost value and lost opportunities to pursue sustainable development or participate in renewable energy markets.
 - b. Ratepayer increases to cover the cost of the pipeline will make electricity more expensive to members of the Lumbee community, many of whom already experience difficulties with energy bills.
 - c. In the long run, the economic impacts of climate change – made worse by fossil fuel emissions that continue after about 2050 – will cost Robeson County a significant amount in terms of lost agricultural productivity, more energy use, higher mortality, and lost labor.
 - d. Recent claims by the developer that most of the pipeline's capacity (50% to 67%) could be sent to South Carolina call into question the reported economic benefits for people living in North Carolina.

- IV. The Atlantic Coast Pipeline jeopardizes community, family, and individual wellness by promoting the degradation of in-tact ancestral lands.
 - a. Native Americans have the poorest health outcomes of any racial group in North Carolina. A major pipeline will exacerbate poor environmental conditions and stress, both of which are linked to major causes of death in the Lumbee community.
 - b. For indigenous peoples, healthy lives and relationships require that people maintain strong connections to their ancestral lands. A major pipeline will damage ancestral lands and damage connections between Lumbee people, land, and water.

- V. The Lumbee Tribe has an opportunity to lead North Carolina and the United States toward a better path that focuses on sustainable development.
 - a. The tribe can demand that regulators use cultural impact assessments and related methods to study the Atlantic Coast Pipeline's effects on indigenous peoples.
 - b. State regulators and other agencies (e.g., State Historic Preservation Office) can be valuable partners in this effort.

Panel Recommendations

- I. Draft a resolution opposing regulatory decisions on the Atlantic Coast Pipeline that ignore adverse or disproportionate impacts on Lumbee people and fail to engage the Lumbee Tribe in meaningful government-to-government consultation. (Immediately)
- II. Call on state regulators, including the Department of Environmental Quality, the Office of State Archaeology, and the Public Utilities Commission to halt further permitting of the Atlantic Coast Pipeline until meaningful government-to-government consultation takes place and a thorough cultural impact assessment has been prepared and reviewed. (Immediately)
- III. Educate tribal members living along the pipeline corridor about easements and eminent domain, offering advice and legal aid to tribal members who may have experienced improper dealings or are at risk of eminent domain takings. (Immediately)
- IV. Designate a Tribal Historic Preservation Officer and a rapid response team to monitor any major excavation and construction activities within tribal territory. (Immediately)
- V. Call on Piedmont Natural Gas and Duke Energy to investigate complaints about existing pipeline easements, complaints about existing compressor stations, and complaints about fair dealings with new easements. (Within the next 6-8 weeks)
- VI. Implement plans based on existing tribal ordinances for health consultation and the Institutional Review Board (IRB). (Within the next 6-8 weeks)
- VII. Create a sustainable economic development plan in partnership with local governments to attract responsible and culturally appropriate industries and businesses to the region. (Within the next 3-6 months)
- VIII. Create a tribal climate resilience plan³ to prepare for economic, health and other impacts of hotter summers, increased drought, and damaging floods. (Within the next 6-12 months)

Detailed Panel Findings

Environmental Justice and the Rights of Indigenous Peoples

The Atlantic Coast Pipeline disproportionately impacts Native Americans along its route. More than 13% of the people living within 1 mile of the proposed route through North Carolina are Native Americans. Only 1.2% of the state population is Native American. Thus, tribal communities are impacted at more than 10 times the rate expected. More than 30,000 Native Americans live within 1 miles of the proposed route. There is no other energy project in the US that would impact such a large number of Native Americans. Federal regulators issued a final environmental impact statement and rendered a decision that ignored these facts. Regulators also ignored requests by tribes for formal consultation during the environmental review process. In other words, regulators denied that the Lumbee Tribe and other tribes living along the proposed

³See further reading section at end of report and also work by the Institute for Tribal Environmental Professionals, Northern Arizona University: <http://www7.nau.edu/itep/main/Home/>

route were important enough to include in the decision-making process. By failing to acknowledge and address the project's disproportionate impacts on the Lumbee and other tribes, regulators have violated federal Executive Order 12898⁴, which calls on all federal bodies to acknowledge and address disproportionate impacts of regulated activities on poor and minority populations. Regulators normally perform an environmental justice analysis to comply with Executive Order 12898; however, FERC did not perform a proper environmental justice analysis⁵.

The pipeline route cuts through the traditional territories of the Lumbee Tribe, the Coharie Tribe, the Haliwa-Saponi Tribe, the Meherrin Tribe, and other Native American communities. Although excavation and other activities would cut through landscapes and waterways of importance to all of these tribes, regulators did not engage any of these tribes in formal consultation during the environmental review. In June 2017, at the request of the Haliwa-Saponi Tribe, the National Congress of American Indians issued a resolution calling on federal regulators to consult with tribes impacted by the Atlantic Coast Pipeline⁶. The resolution was ignored. By failing to engage and, specifically, consult impacted tribes, federal regulators have violated Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples⁷, which states that governments should obtain “free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” The United States government supports this declaration and considers it a guiding policy document.

By failing to acknowledge disproportionate impacts on the Lumbee and other tribes, and by failing to consult with tribes during the environmental review and decision-making process, federal regulators sent a message that they are not concerned about environmental justice and indigenous rights in North Carolina. By ignoring environmental justice concerns and indigenous rights in their final decision on the Atlantic Coast Pipeline, FERC has opened the door to adverse impacts on the Lumbee Tribe. Specifically, if the Atlantic Coast Pipeline is constructed, the federal government's failure to acknowledge impacts on the Lumbee Tribe may limit the tribe's ability to seek redress or mitigation for adverse environmental, economic, social, cultural or spiritual impacts. Without documentation of adverse impacts, developers will have no formal obligation to mitigate. Instead, they may simply offer “goodwill” gestures, including nominal grants or other financial gifts.

The actions of FERC not only run counter to federal policy on environmental justice and indigenous rights, but they also undermine the inherent sovereignty of the Lumbee Tribe. Article 32 of the UN Declaration on the Rights of Indigenous Peoples also declares that indigenous peoples have the right to develop their own “priorities and strategies” for their lands and territories. For all of these reasons, the panel advises the Tribal Council to call on FERC to revoke its decision until it has acknowledged disproportionate impacts on indigenous peoples

⁴ <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>

⁵ Emanuel, RE. *Science* <http://science.sciencemag.org/content/357/6348/260.1>

⁶ <http://www.ncai.org/resources/resolutions/support-for-the-haliwa-saponi-indian-tribe-to-protect-its-lands-waters-sacred-places-and-ancestors>

⁷ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

and addressed tribal concerns through formal consultation. The following sections describe some of the specific impacts on the Lumbee Tribe that have yet to be addressed by state or federal regulators.

Environmental and Cultural Impacts

Construction of the Atlantic Coast Pipeline would have both direct and indirect impacts on landscapes and waterways within the Lumbee Tribe's statistically designated territory in Robeson and Cumberland Counties. The pipeline route crosses more than 60 miles of territory in these two counties, but areas of particular concern for direct impacts are the pipeline's terminus and several places where it crosses tributaries of the Lumbee River. The pipeline's southern terminus would be in the Lumbee community of Prospect. The Atlantic Coast Pipeline would tie-in to existing pipelines owned by Piedmont Natural Gas (a subsidiary of Duke Energy). A new metering and regulation station and a 350-foot tall telecommunications tower would be constructed in Prospect. These facilities would fundamentally alter the rural nature of Prospect, transforming it into a more industrialized landscape. Developers seeks permission to emit industrial gases from the metering and regulation station, and the tower would dominate the community's view-shed, particularly at night due to the presence of aviation beacons. People living or working in the vicinity of these facilities may be exposed to noise pollution that alters the rural character of Prospect. The panel is not convinced that existing air quality regulations and industry best practices for noise reduction will offset the presence of a major industrial facility in this historic Lumbee community.

Much of the existing infrastructure at Prospect, including existing pipelines and a small compressor station, was installed prior to federal environmental justice requirements. As a result, the Lumbee community had no opportunity to participate in decisions about locating this infrastructure in one of its historic communities. The existing infrastructure makes Prospect a convenient location to site the new pipeline terminus and associated structures, but this convenience exists only because of a historic injustice. By capitalizing on the existing infrastructure, the developers are actually deepening this historic injustice. Federal and state regulators have not addressed this issue in their reviews of the Atlantic Coast Pipeline.

The proposed pipeline would also cross several tributaries to the Lumbee River, our most sacred natural landmark. The tributaries supply water to the Lumbee River, and their swamps are important historical, cultural, and environmental resources. Tributaries crossed by the proposed Atlantic Coast Pipeline include: Little Marsh, Big Marsh, Raft Swamp, Richland Swamp, Burnt Swamp, and Bear Swamp. The pipeline would cross these tributaries either by digging open trenches or by drilling, horizontally, beneath each tributary. Both of these methods pose cultural and environmental difficulties. Trenching and drilling both run the risk of exposing and destroying burial remains, artifacts, and ancestral sites that are currently undocumented and intact. The wide wetlands flanking tributaries of the Lumbee River have been undisturbed by centuries of tillage and land development. These are some of the last intact, and undisturbed landscapes in Robeson County. Trenching and drilling by outsiders would desecrate these natural landscapes and, potentially, undisturbed remains of our ancestors.

Trenching requires clearing of native wetland vegetation, and the area would be replanted with herbaceous vegetation. The wetland crossing would require ongoing maintenance to prevent

native wetland forests from recovering. The initial disturbance from trenching and the repeated disturbance from vegetation management will not only destroy native wetlands, but it also increases the likelihood of erosion and contamination of surface water by sediment. Horizontal drilling has the potential to spill drilling fluids into wetlands as streams. Earlier in 2017, a similar pipeline construction project (Rover Pipeline) spilled 2 million gallons of drilling fluids into a wetland adjacent to the Tuscarawas River in Ohio⁸. This example shows that despite regulations and efforts aimed at protecting sensitive environments, environmental damage still occurs. The tributaries listed above all drain to the main stem of the Lumbee River. Thus, any activities that pollute these tributaries with sediment, drilling fluids, or other materials have the potential to impact the Lumbee River itself. The panel believes that the Atlantic Coast Pipeline's proposal to cross six tributaries to the Lumbee River represents a substantial risk to our cultural heritage and natural environment. Tribal officials should work closely with state regulators to review and comment on the developer's proposal to impact streams and wetlands.

Long-term environmental impacts include climate change resulting from our continued use of fossil fuels such as natural gas. Climate change is expected to have strong negative impacts on Robeson County if fossil fuel emissions do not fall sharply over the next 20-30 years⁹. If fossil fuel emissions do not fall rapidly, the region will likely see significantly higher temperatures in the coming decades. In particular, average July temperatures in Robeson County are likely to be more than 3 degrees Celsius (about 6 degrees Fahrenheit) higher in the 2060s than they were in the 1990s¹⁰. Rising summer temperatures will increase the risk of drought, which is related to less water in rivers, streams, and wells. Plant and animal life would be negatively impacted by rising temperatures and drought, and people would also suffer economic and health impacts (see sections on Economic Impacts and Human Health and Wellbeing).

Pipeline developers market natural gas as "climate friendly" because it emits fewer greenhouse gases than coal when it is burned. However, developers leave out two important ideas when presenting this information. First, greenhouse gas emissions from natural gas are only lower than emissions from coal if leaks throughout the system (which includes production wells, storage facilities, and transportation infrastructure) add up to no more than about 3% of total gas production. The main compound in natural gas, methane, is a powerful greenhouse gas. When leaks exceed about 3% of natural gas production, the greenhouse gas emissions of methane cancel the climate advantages of natural gas over coal. Researchers and industry experts all acknowledge that leaks exist, but no one agrees on the total size of leaks. Estimates range from less than 3% to about 10% of total production.

Second, the atmosphere can only accept a limited amount of new fossil fuel emissions before earth experiences a dangerous level of climate change. This is true whether the emissions come from natural gas or the coal that it replaces. The best available science concludes that greenhouse gas emissions must begin to fall sharply between now and 2025, and net emissions must reach zero between 2035 and 2050⁹. In other words, major fossil fuel infrastructure - including the Atlantic Coast Pipeline - must become obsolete in the next 20-40 years to avoid the

⁸ <http://marcellusdrilling.com/2017/04/rover-pipeline-accident-spills-2m-gal-drilling-mud-in-oh-swamp/>

⁹ <https://www.nature.com/news/three-years-to-safeguard-our-climate-1.22201>

¹⁰ Emanuel, RE "Climate Change in the Lumbee River Watershed and Potential Impacts on the Lumbee Tribe of North Carolina" in review, *Journal of Contemporary Water Research and Education*.

most harmful impacts of climate change. Developers and federal regulators both fail to acknowledge that continued fossil fuel use is unsustainable beyond this time period.

Any proposal involving the continued development and use of fossil fuels should include a thorough study of climate change impacts. A federal appeals court recently agreed with this statement and ordered FERC to consider climate change impacts on a similar pipeline proposal¹¹. The state of North Carolina recently joined the US Climate Alliance, which commits the state to reducing greenhouse gas emissions. Yet, climate change impacts have not been an important part of the decision-making process for the Atlantic Coast Pipeline. The panel believes that federal and state regulators should be required to consider climate impacts of the Atlantic Coast Pipeline on the entire Lumbee community, including the people, our non-human relatives, and the landscapes that we call home.

The panel believes that one hallmark of Lumbee identity is concern for the wellbeing of the environment now and in the future. Our environment, including the Lumbee River, its tributaries, their swamps, and the surrounding agricultural landscapes sheltered and protected our people for countless generations. Swamps were forbidding to outsiders and allowed us to maintain our culture and identity, even as settlers occupied lands all around us. Our heroes, including Henry Berry Lowry, found refuge in these swamps and wetlands during times of turmoil. Our communities formed along these swamps and many are named after them. As Lumbee people, we have a responsibility to take care of our environment, because it has always taken care of us. Because the Atlantic Coast Pipeline and the climate change that it brings would threaten the environment that helps define our identity as Lumbee people, we believe that it has no place in our traditional system of values.

The panel also believes that the environmental impacts of the proposed Atlantic Coast Pipeline are closely tied to its cultural impacts. The following statement by panelist Mary Ann Jacobs describes this connection in detail. It explains pipeline risks to environment and culture from a distinctly Lumbee perspective. Dr. Jacobs describes her experience with an existing Piedmont Natural Gas transmission line located near her homeplace in Prospect:

“My name is Dr. Mary Ann Jacobs, I am the Chair of the American Indian Studies Department and I am an Associate Professor at UNCP. I am the daughter of Willard and Lora Neil Cummings formerly of 3916 Hwy 710. My parents are both deceased, but while they were living the pipeline that terminates at Hwy 710 passed directly through their land and the gas company (Piedmont) did a repair of a failing pipe near their home. While this process was happening, my father had to deal with representatives from the land services company, a separate team that actually came to dig the hole for the pipeline and later different crews who installed and welded the pipe and yet another group who came in and pushed the land back over the pipes and sprayed grass seed and hay straw over the whole area. Trees had to be cut down, flowers and a grapevine had to be moved, pine saplings that had just been planted were dug up and could not be replaced.

¹¹ <http://www.sierraclub.org/planet/2017/08/sabal-trail-pipeline-FERC-fracked-gas-pipeline>

My parents are now buried in the Cummings family graveyard next to my grandparents, uncles, aunts and cousins on Prospect Road, just behind the *Welcome to Prospect* sign. Having a pipeline directly under your land (beside your house) means that you are in a blast zone from which you may not escape. My parents are no longer in harm's way, but I still have an Uncle, Aunts, cousins and soon my brother and his wife on our family land and I fear for their safety. The existing Piedmont pipeline is already here; our tribe has already been impacted by this particular pipeline.

Five generations of my family have lived on the land and we are already raising the sixth generation on that land too. Working the land and having the land passed down within our family was extremely important to my grandfather, his sons and my siblings. How do we protect our children and our children's children so that they understand the importance of our lands to our people? My family sees this as our homeplace, pipeline or not. Many of you see our homeplace as your breakfast and lunch place.

My cousins own and run the *Cozy Corner* restaurant. It's part of what makes our homeplace a welcome-mat to the Prospect Community. So far, I've told you about my homeplace and the people important to me living on that land, our family graveyard and the family owned and run restaurant frequented by our community that is on our homeplace. All of that is now along the pipeline and next to the current pumping station.

We need to be planning for our future, one that might include a pipe that may fail and at least will corrode in the future. On September 30th, the *Star Tribune* that publishes out of Minnesota reported on a dispute between the Red Lake Ojibway Tribe near Bemidji and the Calgary-based Enbridge Oil Company. A thirty-year-old pipeline that was put in the ground in the 1960s is failing and Enbridge wants to re-route to a new pipe that would replace the aging pipe¹². Nearly everybody knows about the Dakota Access Pipeline protests that happened last winter where a *proposed pipeline* was to cross under the Missouri River near the Standing Rock Sioux's lands, but not everybody knows that aging pipelines (oil and gas) crisscross the Nation and in many cases are impacting tribal communities like ours.

One of our Native American Speakers Series guests, Dr. Brenda Child spoke at UNCP several years ago. We took her to *Linda's* for one of her meals while she was in the community and she said that she wished there were a community restaurant in her homeplace (she's from the Red Lake community). She wanted to have a restaurant that served her people's *Indian food* where her tribal members could have a nice meal together; a restaurant that served their own food cooked and served by their people. Lumbee people don't know how good we have it in our homeplaces. We need to value our homeplaces just as much as others value them and more, because we can't replace our homelands.

I want to save our land, water, sacred sites, gravesites, our *Cozy Corner* for future generations. I want our tribal council to keep our people and our places at the forefront of

¹² "Nearly 3,400 acres of wild rice lakes would be within 10 miles downstream from Enbridge's proposed route." <http://www.startribune.com/wild-rice-waters-a-big-reason-indian-tribes-oppose-enbridge-pipeline-project/448755803/>

their minds when they are consulting with government agencies or negotiating with Corporations on our behalf. We can't say we didn't know. We have to educate ourselves by reading about these issues as they are impacting other tribal communities. We have to discuss with other tribes and read the agreements they have made with corporations that want to cross their tribal territories and learn from their mistakes and learn of the advantages they may reap. Other tribal communities have much to teach us. We need to use what they have learned.

We can't throw up our hands because existing pipeline is already in the ground in a lot of our territory. We have to live with this pipeline now and we have to hold Dominion and their pipeline partners accountable for the words that they speak and the documents they've signed with our tribal members and for any documents or agreements they may want to sign with our tribe regarding proposed pipelines. Remember that Dominion has not yet received permission from any state or federal agency to build this pipeline. These agencies are still weighing evidence and have yet to make any decisions. In the meantime, what have Dominion and their partners promised other tribes? What do they want from our tribe? What costs will our tribe have to bear in the future?

Our children will bear the costs or benefit from whatever consultations we engage in with government agencies, or whatever agreements we make with Dominion now. Dominion may not be the last corporation wanting to use our homelands for their business purposes. We need to be mindful that this homeplace belongs to all Lumbee peoples and the agreements we make now will impact us and our lands for a very long time.”

The compressor station in Prospect and many of the pipeline sections were installed in an era predating current policies on environmental justice and tribal self-determination. They were also installed in an era predating the current Lumbee constitution and tribal government. During this period, the tribe had little voice in local planning and policy-making. This need not be the case today. The Lumbee Tribe's traditional territory contains many in-tact natural landscapes and communities that hold the tribe's history and culture. Protecting these landscapes and communities should be a key priority, and doing so requires active involvement by the Tribal Council in decisions about major projects such as this one. The panel believes that the Lumbee Tribe's exclusion from the planning and decision-making process for the Atlantic Coast Pipeline runs against the tribe's inherent sovereignty as an indigenous nation.

There are many examples of cultural impact assessments conducted by tribes and on behalf of tribes. There is also a growing body of literature on the use of cultural impact assessments in decision-making. The “Further Reading” section at the end of this report contains examples.

Economic Impacts

The economic benefits of the Atlantic Coast Pipeline to the Lumbee Tribe are uncertain due to lack of specific information from developers on a range of topics. However, the known economic benefits appear to be modest at best. We conclude that the Atlantic Coast Pipeline might bring short-term economic gains to a limited number of people in the Lumbee community, but it is not possible to determine an exact figure. Short-term gains include one-time payments to individual landowners for temporary or permanent easements. These payments typically average a few

thousand dollars per landowner, and the actual economic gain to members of the Lumbee community would depend upon individual negotiations with Lumbee landowners and whether or not the developer uses eminent domain to acquire easements.

Local businesses may see increased spending during the construction period, which can be as short as about 10 days for a local section of pipeline¹³, and as long as about 18 months for an entire interstate pipeline¹⁴. In the final Environmental Impact Statement, the developer estimates that work in Robeson and Cumberland counties (combined for construction planning) would occur between February 2018 and the fourth quarter of 2018. Thus, total time in the county could last between 9 and 11 months. Developers estimate that at the peak of construction, nearly 900 temporary workers would be present in the county, but developers have not said how long the peak will last or what the typical number of workers will be. Developers have not said whether construction workers and contractors would use hotels and stores in Robeson County, or whether they would be based in larger or more centralized areas such as Fayetteville. Actual economic gains to the Lumbee community would depend on where construction workers and contractors choose to do business during their work in Robeson County, and how long it would take to construct the estimated 22 miles of pipeline through the county.

Developers have not confirmed whether or not members of the Lumbee community would be hired as temporary laborers. Developers estimate that half of its temporary workforce would be non-local workers supplied through a joint venture of Price Gregory International, US Pipeline Inc., SMPC LLC, and Rockford Corporation; the remaining temporary workers would be hired from trade unions located along the proposed pipeline route¹⁵. Employment opportunities for members of the Lumbee community would depend on contractors' decisions about where to hire temporary workers, how long they would be employed, and whether they would consider hiring non-union workers in North Carolina. Until we know more about where construction workers and contractors would stay and do business, who they would hire for temporary work, and how long they would spend working in Robeson County, it is impossible to estimate short-term economic benefits beyond easements paid to individual landowners.

Long-term economic benefits are also uncertain. The developer estimates that it would pay Robeson County an average of about \$860,000 per year in property taxes. Actual taxes would depend on the market value of the pipeline and its related infrastructure. Beyond tax revenue paid to the county which might benefit members of the Lumbee Tribe, it is impossible to say how the Lumbee community might benefit from the pipeline's presence over the long-term.

Most (80%) of the pipeline's capacity is reserved for the developers' use at company-owned power plants outside of Robeson County. Although some of the remaining capacity could spur new development, no one knows where that development might occur along the 600-mile pipeline route. In fact, the federal environmental review did not consider impacts of potential

¹³ Estimate from the Canadian Energy Pipeline Association, <https://www.aboutpipelines.com/en/pipeline-101/construction/>

¹⁴ Estimate from Enbridge, the developer of the Dakota Access Pipeline, <http://www.spectraenergy.com/Operations/US-Natural-Gas-Operations/New-Projects-US/Our-Process-Interstate/Pipeline-Construction/>

¹⁵ Dominion Energy advertising brochure, <http://bit.ly/2ybWsom>

economic development, population growth, and infrastructure expansion, noting “the timing, location, and extent of these factors is highly speculative.”¹⁶ The same document acknowledged that “when and if these additional activities or projects occur, they would be the result of many factors, not just the pipeline project...” The panel notes that the developers have a disincentive to discuss economic development in any materials submitted for state or federal review; if the project is expected to stimulate economic development directly, then the impacts of this development would be considered as part of the “cumulative impacts” section of the environmental review. Therefore, for regulatory purposes, the developers have a strong incentive to distance themselves from economic growth.

On October 2, 2017, representatives from Dominion Energy stated that they were unable to disclose information about specific companies or industries that might take advantage of the Atlantic Coast Pipeline. Panel members noted that a wide range of factors besides the availability of natural gas influence a company’s decision to move to an area. Panel members also noted that all communities along the proposed pipeline route would compete to attract businesses. Without knowing what types of business might come to the region, where they would be located, or whether they would come at all, it is impossible to assess the long-term economic benefits of the project.

There are serious economic disadvantages to the pipeline, and these disadvantages likely outweigh economic benefits. One-time easement payments are unlikely to compensate for landowners’ loss of value over the long-term as a result of having a pipeline on their property. Easements contain many restrictions on how landowners can use their property. These restrictions limit construction and development activities, and they also limit certain agricultural activities (e.g., crossing the easement with heavy farm machinery). Notably, pipeline easements may prevent landowners from participating in renewable energy initiatives, including erecting solar panels on their property or growing trees for bioenergy. Finally, Landowners and their assignees are liable for damages to the pipeline, as illustrated by recent pipeline accidents in Lumberton and Saint Pauls¹⁷. Since 2010, companies developing the Atlantic Coast Pipeline have been involved in at least 37 major incidents totaling more than \$8 million in damages.

In recent years, catastrophic accidents in Pennsylvania, California, and Louisiana have raised public awareness about safety risks of living near major transmission pipelines. The panel believes that public perceptions of pipeline hazards will impact property values, especially in rural communities that have few other infrastructure hazards. The panel could find no independent research on impacts to property values, but two panel members living near existing natural gas pipelines in Prospect raised major concerns about the impacts of pipelines on property values and safety in the surrounding community.

¹⁶ Atlantic Coast Pipeline and Supply Header Project, Final Environmental Impact Statement -Volume I. Federal Energy Regulatory Commission, July 21, 2017. P. 4-595.

¹⁷ Two recent pipeline incidents in Robeson County resulted in contractors receiving bills from Piedmont Natural Gas totaling \$182,000 for damages to existing pipelines. See recent report to Lumbee Tribal Council Health Committee by R. Emanuel entitled, “Gas Pipeline Incidents Reported in Robeson County (2010-Present).”

Panel members also discussed damage to soils on agricultural lands, noting that it can take years to recover crop productivity over easements due to soil compaction and improper excavation practices. Agricultural landowners with pipeline easements may also lose opportunities to lease their lands to solar energy developers, who offer leases in Robeson County of up to \$1200 per acre per year. This is noteworthy, because Robeson County currently leads North Carolina in economic investments in renewable energy. Solar energy and bioenergy developers are actively working in the state, and landowners risk losing opportunities to participate in these markets through easement restrictions. Landowners may also forfeit the ability to develop their own property, including the common Lumbee practice of subdividing farmland and building homes for extended family. The panel does not believe that one-time easement payments of a few thousand dollars can make up for restrictions to use of property, loss of property value, and safety risks associated with the presence of a pipeline on their property.

Long-term economic impacts include expected rate increases from electric utilities involved in the Atlantic Coast Pipeline, including Duke Energy. The rate increases would help developers pay for the \$5 billion pipeline. Lumbee River EMC purchases electricity from Duke Energy, and customers in Robeson County would likely be affected by these increases through higher electrical bills. Energy analysts and researchers agree that in the absence of strict regulations governing natural gas usage, projects like the Atlantic Coast Pipeline will stifle renewable energy efforts. Because no such regulatory framework is in place, Robeson County stands to lose future investments in renewable energy.

Panel members representing local Lumbee communities along the pipeline route express concern over increased burdens on local emergency services. In particular, panelists question whether local volunteer fire departments would have the resources and training necessary to respond to gas leaks or other safety hazards posed by the pipeline and related infrastructure. Zones of incineration (blast) and evacuation extend for many hundreds of feet away from the pipeline on both sides, and these zones impact properties, dwellings, and other structures far from easements.

Construction of new pipelines and power plants will create economic problems because of climate change. If the Atlantic Coast Pipeline and other pipelines like it continue to be built and operated over the next several decades, the economic cost of climate change will be extraordinarily high for Robeson County. Specifically, losses in crop productivity, increased mortality, higher energy costs, and other factors will cost Robeson County about 11% of its gross annual income for each degree of climate warming by the end of this century¹⁸. This is the highest percentage loss of any county in North Carolina. In other words, if global temperature rises by two degrees¹⁹ it would cost Robeson County approximately \$750 million per year by the end of this century. This number is only a rough estimate, but it shows that the real, economic cost of climate change in Robeson County stemming from projects like the Atlantic Coast Pipeline is nearly 1,000 times greater than the tax revenue that the pipeline brings to the county. When the short-term and long-term benefits and disadvantages are compared, it is clear that the Atlantic Coast Pipeline brings little economic value to Robeson County and to the Lumbee

¹⁸ <https://www.nytimes.com/interactive/2017/06/29/climate/southern-states-worse-climate-effects.html>

¹⁹ Two degrees (Celsius) of warming is the global target that scientists and policy makers think will avoid the “worst” effects of global warming.

Tribe. Developers make vague promises of temporary employment and economic development, but there are no details yet to support these claims. On the other hand, restrictive easements, proposed rate increases, and contributions of the Atlantic Coast Pipeline to climate-related economic damages far outweigh even the most optimistic economic benefits to the Lumbee Tribe and other communities in North Carolina.

Recently, the Vice President of the lead developer stated that between half and two-thirds of the pipeline's capacity could be sent to South Carolina²⁰. This was a surprising statement, given that the developers argued to regulators and the public that communities in North Carolina and Virginia would be the main beneficiaries of the pipeline. The panel has no way to know whether the statement about South Carolina was simply an empty promise, whether the developers secretly plan to send most of the gas into South Carolina, or something else. Regardless, the panel believes that these statements are an example of what our elders call "talking out of both sides of your mouth." Our elders taught us to be vigilant and to question the motives and promises of anyone who does this. Thus, the panel recommends that the Lumbee Tribe question the developers' promises of economic development.

Another area of concern is language that the panel believes to be deliberately misleading to the public. In particular, the developer's current advertising campaign focuses on the absence of an interstate gas transmission line in eastern North Carolina as a limitation to economic development. This language was also incorporated into the environmental review with statements that include: "There are currently no interstate natural gas transmission pipelines that supply eastern North Carolina."²¹ The panel notes that while it is true there is no interstate gas pipeline in eastern North Carolina, every region of the state, including Robeson County, is connected to North Carolina's existing interstate pipeline, the Transco pipeline. In total, North Carolina is already serviced by more than 4,000 miles of existing natural gas transmission pipelines²², and most of these were installed prior to federal and state policies on environmental justice and tribal consultation.

The developer also notes that the Transco pipeline, which has a total capacity of 11 billion cubic feet per day, cannot accommodate an additional 1.44 billion cubic feet per day, which is the amount of gas that the Atlantic Coast Pipeline developer has already signed into contract. It may be true that the Transco pipeline does not have this much extra capacity available, but the panel noted that approximately 80% of the Atlantic Coast Pipeline's capacity is already earmarked for electricity generation at developer-owned facilities. This means that the Atlantic Coast Pipeline would provide no more than 20% of its total capacity (0.3 billion cubic feet per day) to natural gas customers.

When the developer mentions the existing Transco pipeline, there is no discussion of whether or not it can supply any amount up to the 0.3 billion cubic feet per day that the Atlantic Coast Pipeline would make available to gas customers. The panel believes that these statements are

²⁰ <http://wunc.org/post/contrary-original-plan-atlantic-coast-pipeline-may-extend-beyond-north-carolina#stream/0>

²¹ Atlantic Coast Pipeline and Supply Header Project, Final Environmental Impact Statement -Volume I. Federal Energy Regulatory Commission, July 21, 2017. P. 1-3.

²² US Pipeline and Hazardous Materials Safety Administration, <http://bit.ly/2ywUrD8>

misleading and meant to imply that eastern North Carolina has insufficient access to natural gas. Neither this claim, nor the claim that eastern North Carolina lacks access to gas infrastructure, has been examined by federal or state regulators, and neither claim is supported by analyses included in federal or state reviews. Given evidence of misleading and disingenuous statements, the panel urges the Lumbee Tribe to weigh carefully the exact language used by the developer and the developer’s advertising partners (e.g., EnergySure).

As a community dedicated to the economic success of future generations, the panel believes that the Lumbee Tribe has no reason to support this project. The short-term and long-term economic benefits do not appear to outweigh the economic disadvantages, and the developers have made contradictory statements about where the pipeline will end and who it will serve. Instead, the panel believes that the tribe should focus efforts on economic opportunities that benefit the entire Lumbee community now and in the long-term. These opportunities should be consistent with indigenous values in general (see, for example, Table 1) and Lumbee values in particular.

Table 1: Approaches to Economic Development Based on Traditions²³

Values and Activities	Native American	Modern Industrial
Relationship with Nature	Preserve and Restore	Extract and Pollute
Relationship with Land	Source of Life to Preserve	Resource for Material Gain
Business Focus	Place and People	Productivity and Profit
Basic Assumptions	Life is Spiritual, Matter is form of Spirt	Life is Material; Spirit is separate than Matter
Business Ownership	Local/Tribal	National or International (Absentee)
Energy Sources	Renewable Energy	Fossil Fuels
Climate Change	“Great Cleansing”; Halt all further fossil fuel development, including natural gas	Climate Denial; Promote natural gas to maximize profits

Human Health and Wellbeing

We are a resilient people, but as a community we are marked by historical trauma and other factors that impact our health and wellbeing. Active and robust relationships with the lands and waters of our ancestors are needed to restore and maintain individual, family, and community health. The construction and operation of a major pipeline and related infrastructure works against this indigenous model of health. In the short-term, the degradation of land and water caused by construction activities has the potential to impact our ability to enjoy our ancestral territories and to restore health and wellness. Over the long-term, those living or working near pipeline infrastructure, including the metering and regulating station, will likely experience higher levels of air pollution from permitted emissions and a more stressful environment. Three of the leading causes of death among the Lumbee, cancer, heart disease, and chronic lung disease, are linked to environmental quality. Other leading causes of death among the Lumbee, including accidents and homicide, are linked to stress.

²³ Adapted from work by Rev. Mac Legerton, Center for Community Action, Lumberton, NC

The developer's public relations campaign seeks to equate energy security and economic development with human wellbeing. The panel does not believe that these are bad things in and of themselves, but we disagree that energy and economic security alone can take the place of the type of wellbeing that a tribal community draws from close relationships with ancestral lands and waters. We believe that the Lumbee Tribe has an opportunity to show how an indigenous community can develop economic and energy projects in a responsible way that respects culture and environment to ensure the wellbeing of this generation and seven generations to come.

Leadership in a Time of Confusion

The panel believes that the Atlantic Coast Pipeline places the Lumbee community at risk, but it also provides an opportunity for the Lumbee Tribe to exercise leadership, charting its own course instead of adapting to or accepting the plans of others for our community. As an inherently sovereign indigenous people, the Lumbee Tribe has a right to make decisions consistent with our cultural, spiritual, historical, and environmental beliefs. The United Nations Declaration on the Rights of Indigenous Peoples⁴, which the United States supports, confirms this fundamental right. In 1999, the indigenous rights leader, Ingrid Washinawatok El-Issa (Flying Eagle Woman, Menominee), explained how sovereignty is closely tied to our identity, culture, and society²⁴:

“Since the time that human beings offered thanks for the first sunrise, sovereignty has been an integral part of indigenous peoples’ daily existence. With the original instructions from the Creator, we realize our responsibilities. Those are the laws that lay the foundation of our society. These responsibilities manifest through our ceremonies... Sovereignty is that wafting thread securing the components of a society. Sovereignty runs through the vertical strands and secures the entire pattern. That is the fabric of Native Society.”

The panel believes that the tribal government has an opportunity to exercise sovereignty and self-determination in the matter of the Atlantic Coast Pipeline, even though the Lumbee Tribe was excluded from planning and decision-making on the project. We recommend that the tribal government reject the pipeline and urge other governments to do the same. We show evidence that the project is environmentally harmful, culturally inappropriate, economically unsound, in conflict with health and wellness, and part of a system of unsustainable energy that must be replaced in order to avoid harmful impacts to the Earth. Our tribal constitution states that the goals of our tribal government include: “preserving for all time the Lumbee way of life and community, promoting the educational, cultural, social and economic well-being of Lumbee people, and securing justice and freedom for the Lumbee people.” The Atlantic Coast Pipeline will not advance these goals in a meaningful way.

The Lumbee Tribe is not alone in dealing with fossil fuel energy development. Last year, the tribe sent representatives to support the Standing Rock Sioux Tribe in their stand against the Dakota Access Pipeline. That encampment was the largest gathering of Native American tribal nations in modern history. Ojibwe tribes in Minnesota actively oppose oil pipelines near their wild rice beds, coastal Salish tribes actively fight coal and natural gas terminals in the Pacific

²⁴ Mankiller, W. P. (2009). *Every day is a good day: Reflections by contemporary indigenous women*. ReadHowYouWant.com.

Northwest, and Native American leaders such as Winona LaDuke (White Earth Ojibwe), Tom Goldtooth (Navajo), and the late Dennis Banks (Leech Lake Ojibwe) have supported recent efforts by tribes across the nation to resist fossil fuel development. Here in North Carolina, the Haliwa-Saponi Tribe called on the state government to formally reject the Atlantic Coast Pipeline after petitioning the National Congress of American Indians to issue their 2017 resolution. That resolution places hundreds of tribes, all members of NCAI, on the side of the Lumbee and other tribes that were excluded from the decision-making process.

The panel believes that the Atlantic Coast Pipeline creates a false choice between economic development and preserving our land and culture. This is a false choice, because a natural gas pipeline is not the only path toward economic development, and evidence suggests that it is neither an environmentally or culturally sustainable path toward economic development. In fact, very little evidence has been shown to support the idea of any economic development whatsoever from the Atlantic Coast Pipeline. In light of this, The Lumbee Tribe now has an opportunity to provide leadership by carefully considering the consequences of the Atlantic Coast Pipeline and weighing impacts against sustainable alternatives. There is no need to rush decisions that have complex consequences.

Cultural and social impact assessments and other tools exist to evaluate projects like the Atlantic Coast Pipeline. For example, the Anishinaabe people of Minnesota have prepared a cumulative impact assessment for a major pipeline crossing their ancestral lands.²⁵ A growing body of research and practical examples show that these tools can help regulators understand indigenous perspectives. Even though federal energy regulators have ruled on the project, there is still time for the Lumbee Tribe to demand an assessment that respects our unique culture and sense of place. Taking time to ask questions and set a standard for sustainable development is critical. This is an opportunity for the Lumbee Tribal Council to become a national leader when it comes to thoughtful development that respects both who we are as Lumbee and how we will move into the future. Doing so is sovereignty in action.

Further Reading on Culturally-Informed Decision Making

- Bishop, R., & Glynn, T. (1999). Researching in Maori contexts: An interpretation of participatory consciousness. *Journal of Intercultural Studies*, 20(2), 167-182.
- Harris, S., & Harper, B. (2011). A method for tribal environmental justice analysis. *Environmental Justice*, 4(4), 231-237.
- Kearney, M. (2017). Our bodies our spirits: Indigenous health through the lens of traditional resources. *Northwest Climate Magazine* (US Dept. of Interior NW Climate Science Center). Accessed 11/17/17: <http://bit.ly/1e4fsqA>
- Morgan, Te Kipa Kepa B., T., Fa'au, N., & Manuel, R. D. Decision making at the Interface: Mauri and its contribution to the Rena Recovery. Accessed 11/17/17: <http://bit.ly/2hHJ30o>
- Taylor, I. (2016). Using First Nations Systems Thinking to Operationalize Sustainable Development. In *Applications of Systems Thinking and Soft Operations Research in Managing Complexity* (pp. 307-322). Springer International Publishing

²⁵ http://www.mnchippewatribe.org/pdf/Intro_DRAFT.pdf