



August 15, 2025

The Honorable Paul Krizek, Chairman
*Commission on Updating Virginia Law to
Federal Recognition of Virginia Tribes*
General Assembly Building
201 North 9th Street Room 1010
Richmond, Virginia 23219

Dear Chairman,

I understand that at the July 7th meeting of the Commission on Updating Virginia Law to Reflect Federal Recognition of Virginia Tribes (the Commission), you and your colleagues had some questions about updating the Virginia Code to allow for Virginia Tribes to hold open space easements. I am unable to attend your August 19th meeting in person, but I am writing to address the Commission's questions for the Virginia Outdoors Foundation.

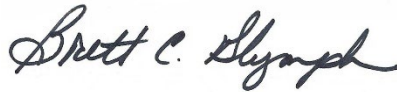
First, multiple commissioners expressed interest in adding the term "cultural preservation" to the purpose of open-space easements in Virginia Code. Currently, the code permits public bodies to hold open-space easements for the purposes of *"retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property"* Va. Code. Sec. 10.1-1701. In my opinion, adding "cultural preservation" to this definition would be an appropriate refinement of the historic resources category (i.e., historical, architectural or archaeological aspects of real property) but is not required to accommodate cultural preservation. In my opinion, "cultural preservation" falls under "historical" preservation in the current code. However, if commission members are interested, this addition would be consistent with VA Code purposes and intentions to promote historic resource preservation.

Second, the commission expressed interest in including state or federally recognized Virginia Tribes in the definition of "public bodies" under the Open-Space Land Act. The code currently defines public bodies eligible to hold open-space easements as *"any state agency having authority to acquire land for a public use, or any county or municipality, any park authority, any public recreational facilities authority, any soil and water conservation district, any community development authority."* (Sec. 10.1-1701.1). Since a recognized tribe is a sovereign entity, I believe that adding Virginia Tribes to the definition of a public body is consistent with the purposes of the Open-Space Land Act to allow governmental entities to hold conservation easements. This will allow Virginia Tribes to hold easements from landowners. Those landowners may receive tangible tax benefits for preserving their land, granting access to tribal members, or minimizing development.

Third, the commission expressed interest in whether there are any differences in the tax benefits available to property owners whose land is subject to either an open-space easement or conservation easement. The answer is no. The federal and state tax benefits are available on equal terms for landowners who grant easements under the Conservation Easement Act or the Open-Space Land Act. The substantive differences between the two legal regimes are centered around 1) the type of easement holder – the Conservation Easement Act authorizes *private nonprofit entities* to hold easements while the Open-Space Land Act authorizes *public bodies* (i.e., governmental entities) to hold easements – and 2) the legal remedies for extinguishment of easements. These differences have no bearing on the associated tax benefits for landowners.

While I have addressed this letter to you, I certainly encourage you to share it with your colleagues on the Commission. Thank you for the opportunity to serve the Commission in this important work. If there are any follow-up questions, I am happy to answer them or provide any additional information on the work of the Virginia Outdoors Foundation to assist the Commission.

Kindest Regards,

A handwritten signature in dark ink, reading "Brett C. Glymph". The signature is fluid and cursive, with the first name "Brett" being the most prominent.

Brett Glymph
Executive Director
Virginia Outdoors Foundation

cc: Brooks Braun
Maria Salgado
Andrew Block