

Commission to Update Virginia Law to Reflect Federal Recognition of Tribes in Virginia

An Introduction to the
Federally Recognized
Tribes

Marion Werkheiser,



Purpose of the Code Commission

“The Commission on Updating Virginia Law to Reflect Federal Recognition of Virginia Tribes (the Commission) is established in the legislative branch of state government for the purpose of **performing a comprehensive review of Virginia law** to assess ways in which it must be **revised to reflect the government-to-government relationship the Commonwealth should maintain, by treaty and applicable federal law, with the sovereign, self-governing, federally recognized Tribal Nations** located within the present-day external boundaries of the Commonwealth.”

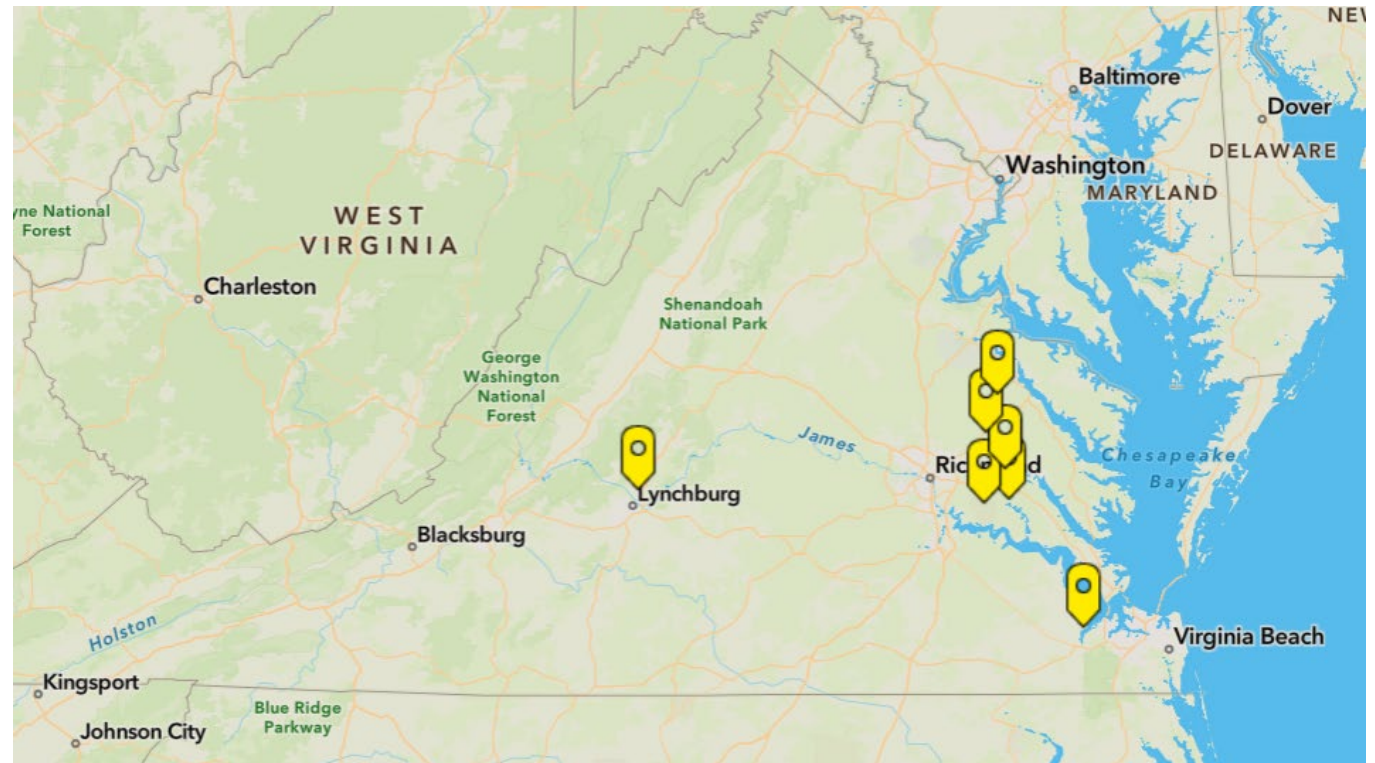
Introduction to the Federally Recognized Tribes Headquartered in Virginia

- Virginia is home to seven federally recognized Tribal Nations:
 - Chickahominy Indian Tribe
 - Chickahominy Indian Tribe – Eastern Division
 - Monacan Indian Nation
 - Nansemond Indian Nation
 - Pamunkey Indian Tribe
 - Rappahannock Tribe
 - Upper Mattaponi Tribe
- Many of the Tribes maintain close relationships, but each Tribe is distinct and has a sovereign government



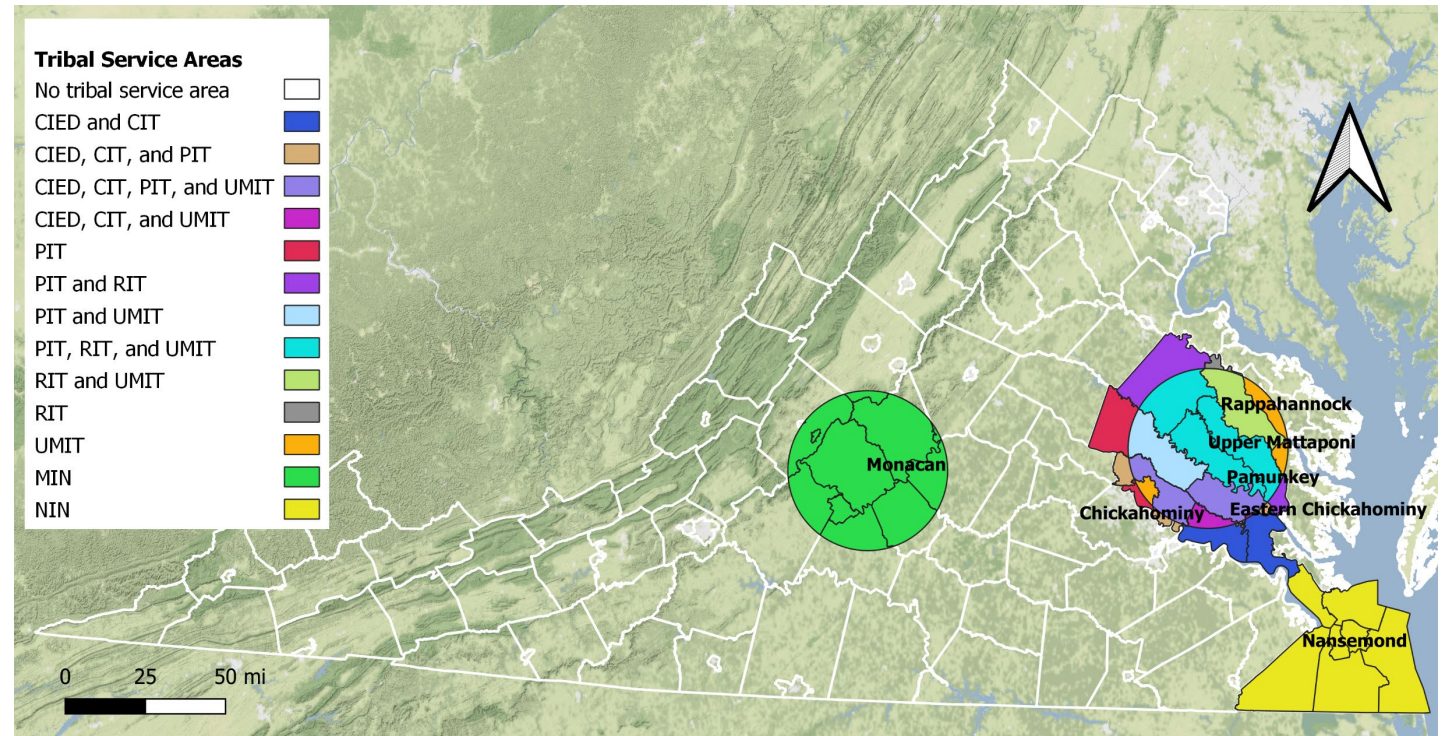
Introduction to the Tribes

The tribal headquarters are mostly concentrated on the eastern end of the state, and may not reflect each Tribe's area of cultural interest or its Tribal Service Area (TSA)



Tribal Service Areas

Tribal Service Areas are regions where federally recognized Tribes are authorized to receive federal funds for providing services such as health care, affordable housing, infrastructure improvements, and other services



ARTICLES OF PEACE

Between

The Most Serene and Mighty PRINCE

CHARLES II.

By the Grace of God,

King of *England, Scotland, France and Ireland,*
Defender of the Faith, &c.

And Several

Indian Kings and Queens, &c.

Concluded the 29th day of *May*, 1677.

Published by His Majesties Command.

LONDON,

Printed by *John Bill, Christopher Barker, Thomas Newcomb*
and *Henry Hills*, Printers to the Kings
Most Excellent Majesty. 1677.

History of the Tribes & the Treaty of Middle Plantation

- Tribal Nations have lived in what is now Virginia for more than 15,000 years
- They were some of the first to encounter Europeans who journeyed to the “New World”
- English colonists relied on Tribes for survival, conducted diplomacy, and negotiated treaties with tribal leaders
- In 1677, the Tribes signed a treaty with the English Crown known as the Treaty of Middle Plantation. The obligations under this treaty were assumed by the U.S. government after the American Revolution and endure to this day

History of the Tribes & the Virginia Government

17th – mid-18th Century:

- The General Assembly acknowledged the existence of Tribal Nations within the Commonwealth and passed laws about where colonists could settle in relation to the Indian settlements
- Tribal Nations brought petitions about treaty rights to the General Assembly

Late 18th – 19th Century:

- The General Assembly allowed for the sale and allotment of tribal lands, which ultimately led to the dismantling of tribal reservations and sovereign tribal governments

CHAPTER 99.—An act concerning William G. Bozeman.
[Passed February 23d, 1824.]

1. *Be it enacted by the General Assembly*, That the county court of Southampton shall be, and they are hereby authorised and empowered, upon the application of William G. Bozeman, a descendant of a female of the Nottoway tribe of Indians, to ascertain, either by reference to a commissioner, or by evidence exhibited before the court, as to them shall seem best, the value of the interest of the said William G. Bozeman, in the estate real and personal held in trust for the use and benefit of the said tribe; having first summoned the trustees of the tribe to represent its interests upon such application; and when the interest of the said William G. Bozeman shall have been so ascertained, it shall be lawful for the said court, and they are hereby empowered, to order the said trustees to pay the said Bozeman, out of the funds of the tribe, the amount of the ascertained value of his said interest, to have and to hold as his individual and absolute property, in full discharge of all his interest and claim in and to the trust estate aforesaid: or, if it shall seem best to the said court, upon a full hearing and understanding of the whole matter and mature consideration thereof, they shall have power to assign and set apart to the said William G. Bozeman, to be held by him in manner aforesaid, such portion of the said estate real and personal, as will be of value equal to the amount of his interest ascertained as aforesaid.

2. *And be it further enacted*, That all laws now in force forbidding contracts for the sale of real property between Indians of the said tribe and white persons citizens of this Commonwealth, shall cease in their operation and effect so far only as they concern the said William G. Bozeman; and, that, after the allotment to him of his interest in the lands belonging to the said tribe, shall have been made as aforesaid, he, the said Bozeman, shall have the same power to sell, convey, or exchange the same, as free white persons of this Commonwealth possess and enjoy.

3. *And be it further enacted*, That whenever any descendant of a female of the Nottoway tribe of Indians, entitled to a share of property in common, in the county of Southampton, shall apply to the county court of the said county for privileges similar to those granted to William G. Bozeman, the said court, after si-

1824 Act Allowing Allotment of the Remaining
Nottoway Reservation



History of the Tribes & the Virginia Government

20th Century:

- Some state agencies recognized the separate status of the tribes, others denied their existence
- The Racial Integrity Act of 1926 erased the existence of Virginia Indians from the official state vital statistics records
- Indian students who attended public Indian schools were barred from receiving diplomas by state law and were not educated beyond 8th grade
- 1982: The General Assembly established the Virginia Council on Indians to advise on a formal process to recognize the tribes



History of the Tribes & the Virginia Government

- 1982: The General Assembly established the Virginia Council on Indians to advise on a formal process to recognize the tribes
- State recognition was extended to the Pamunkey, Mattaponi, Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock, and Upper Mattaponi Tribes.
- 2010: Commonwealth formally recognized the Nottoway Indian Tribe, Cheroenhaka-Nottoway Tribe, and the Patawomeck Indian Tribe.

Striving for Federal Recognition



Each of the seven federally recognized tribes spent decades advocating for recognition:

- 2016: The Pamunkey Indian Tribe received acknowledgment through the U.S. Bureau of Indian Affairs (BIA) after a 30-year administrative process
- 2018: Congress recognized six additional Tribes in the Thomasina E. Jordan Act after ~25 years of federal advocacy - Chickahominy Indian Tribe, Chickahominy Indian Tribe – Eastern Division, Monacan Indian Nation, Nansemond Indian Nation, Rappahannock Tribe, and Upper Mattaponi Tribe

Achievements Since Federal Recognition

- Since recognition, the Tribes have faced challenges and opportunities flowing from recognition as well as the pandemic
- The Tribes leveraged their resources to benefit their citizens and neighboring non-Native communities. Examples include:
 - Establishing medical clinics and distributing vaccines
 - Extending broadband infrastructure
 - Providing childcare
 - Improving clean water access
 - Conserving cultural heritage and land
 - Launching tribal businesses



A hand holds a large, decorated feather fan in the foreground. The fan has several long, white feathers with dark brown tips and colorful, patterned shafts. In the background, the U.S. Capitol building is visible under a vibrant sunset sky with orange, pink, and blue hues.

What Does Federal Recognition Mean?

- Federal recognition acknowledges the inherent sovereignty of tribal governments
- Tribal sovereignty means that tribal governments govern themselves according to their own traditions, laws, and leadership structures
- Recognition provides tribes access to federal funding when a Tribal Nation seeks to serve its citizens directly
- Tribes often choose to invest in development efforts that benefit both the tribe and nearby communities, like establishing public health centers
- Tribes can place lands into trust with the federal government

What Are the Differences Between Federal and State Recognized Tribes?

There are many differences between federally recognized and state recognized Tribes. Some examples include:

- Federally recognized Tribes have sovereign governments that require a government-to-government relationship with federal, state, and local governments
 - State-recognized tribes do not legally have a government and are often organized as 501(c)3s (nonprofits)
- Federally recognized Tribes have sovereign immunity as well as legislative, judicial, taxation, and law enforcement powers
 - State-recognized tribes do not have these powers
- Federally recognized Tribes can access federal funding to provide services comparable to the services provided by federal and other governments (including healthcare, emergency management, environmental regulation oversight)
 - State-recognized Tribes may be eligible for some federal grants, but they are not authorized providers of federal services

Why Is the Code Commission Needed?

- Federal recognition of the seven Tribes necessitates reviewing and updating Virginia law to ensure compliance and consistency with federal Indian law
- Tribes have a unique status
- The U.S. Constitution, Article I, Section 8, Clause 3: [The Congress shall have Power . . .] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . .



Why Is the Code Commission Needed?

- Preliminary research illustrates that there are revisions to consider in almost every Title of the Virginia Code
- The Commission will report back to the General Assembly with its recommendations



Other States Provide Possible Models

- Many other states have changed their Code to include federally recognized Tribes
- Examples include: Oklahoma, Wisconsin, South Dakota, Arizona, Alaska, Washington, and more
- We can learn how they worked out the relationships between state, local, and Tribal governments
- Using a variety of examples can help the Commission

