Circuit Court for Garrett County
Case No.: C-11-CV-23-000132

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0512

September Term, 2024

IN THE MATTER OF
YOUGH FARMS, LLC, ET AL.

Berger,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: June 16, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This matter is about a bridge in Garrett County ("the County"). The bridge, which carries Swallow Falls Road across the Youghiogheny River, has been in place since 1960.[1] The County believes that the present structure must be retired and has submitted a plan to the Department of Natural Resources ("the Department") for its replacement. There are stringent legal restrictions on development that are set forth in the Scenic and Wild Rivers Act (SWRA) and its regulations.[2] Unless a developer obtains an exception, compliance with the SWRA and regulations is mandatory. So that the bridge replacement plan could move forward, the County asked the Department for an exception from those restrictions.

On August 18, 2023, the Secretary of the Department issued a decision "conditionally granting the County's exception request." The proposed design alternatives

[1] The "Swallow Falls Road Bridge (MIHP # G-IV-A-290, Bridge G-02000) was built in 1960 near the site of an earlier nineteenth-century bridge across the Youghiogheny River, near the Swallow Falls community, in western Garrett County." Maryland State Highway Administration, *State Historic Bridge Context & Inventory of Modern Bridges,* at 71. Accessed at https://roads.maryland.gov/OPPEN/MDBridgeSurvey.pdf (visited May 8, 2026).

[2] Md. Code (1974, 2023 Repl. Vol., 2025 Supp.) §§ 8-401 – 8-411 of the Natural Resources Article (NR), as implemented by Code of Maryland Regulations (COMAR) 08.15.01 – 08.15.04. COMAR 08.15.02.02A provides:

> Unless otherwise exempted under §E of this regulation, before any person begins or modifies any use or development permitted by these regulations, the person shall first submit a completed application for a use or development permit to the Department and obtain its approval.

COMAR 08.15.02.03A requires an "application for an activity permit" that must be submitted to the Department. COMAR 08.15.03.03A(1) dictates that the applicant demonstrate that the "exception is consistent with the legislative intent of the Scenic and Wild Rivers Act and is not injurious to the scenic and wild character of the river[.]" The Natural Resources Article's definition of "person" includes "any county … individual … or any other entity." NR § 8-101(d).

to the current span are quite ambitious, and controversial. On September 15th, Appellants Yough Farms, LLC, Old Growth Forest Network, and Steve Storck filed a petition for "Judicial Review, Administrative Mandamus, Declaratory Relief and Injunction" in the Circuit Court for Garrett County, seeking to overturn the Department's decision and block the project. The circuit court issued a Memorandum & Order on April 25, 2024, affirming the Department's action and dismissing the petition.

Appellants filed a timely appeal from the circuit court's decision and raise several questions, which we have rephrased as follows[3]:

1. Whether the Department's actions were "quasi-judicial" or "quasi-legislative".

[3] Appellants specifically present the following questions:

1. Does the Secretary's failure to make adequate findings of fact and conclusions of law require remand?
2. Can the DNR grant an exception allowing for road and bridge construction and associated clearing on land it has designated as an Irreplaceable Natural Area?
3. Does the County have standing to make an application for an exception to the Scenic and Wild Rivers Act on land that it does not own?
4. Is the proposed development consistent with the legislative intent of the Scenic and Wild Rivers Act and/or the Irreplaceable Natural Areas Act?

Although Appellants present the above questions, they also aver, as part of their statement of the standard of review, the following:

A. The County's claim that it's [*sic*] actions were quasi-legislative is incorrect.

In addition, Appellants assert a variety of other contentions throughout their brief. We shall endeavor to address each additional argument.

2. Whether the Department's decision was sufficiently articulated and adequate to provide for judicial review.
3. Whether the Department's decision to grant an exception accords with applicable law and evaluates all relevant evidence.

For the following reasons, we shall vacate the circuit court's order and direct it to remand to the Department for reconsideration of the County's application.

BACKGROUND

Introduction

Garrett County is home to the Youghiogheny region, which hosts "[s]ignificant ecological systems," with a "predominance of ecologically significant and sensitive natural areas around Swallow Falls[].]" "More than two-thirds of the Youghiogheny region is forested," and the "largest Hemlock and White Pines recorded in Maryland are located in Swallow Falls State Park[.]"[4]

The County's proposal to replace the Swallow Falls Bridge was planned "in cooperation with the Maryland Department of Transportation – State Highway Administration[.]" The bridge "project is located within Swallow Falls State Park and is part of a 37-acre grove of old-growth hemlock and pine, some of which are over 300 years

[4] All quotes in this paragraph taken from Department of Natural Resources. Exhibit 1, Swallow Falls Bridge Replacement Youghiogheny River Scenic and Wild Rivers Application: Environmental Assessment.

old[.]" The July 5, 2023, draft memorandum to the Secretary of the Department from Mary Owens, the DNR manager for this project, gives a useful overview of the project[5]:

> **Application Summary**
>
> The existing bridge is a two span simply supported steel beam bridge with an overall length of 101' and a clear roadway width of 20'. Technically, the existing bridge is closed to traffic, but a single lane, Acrow panel truss structure was installed over the existing bridge to maintain traffic flow. This temporary bridge has been in place for approximately ten years.
>
> The proposed bridge will be designed to meet Federal Highway Administration standards and will include two 10' wide travel lanes, two 5' wide bicycle lanes, and a 5' wide sidewalk for a total width of approximately 35'. Because of the increase in width and proposed changes to the structural design of the bridge to utilize a single span rather than two spans with a support structure in the center of the river, some impacts to the Scenic and Wild River Corridor and to Swallow Falls State Park are unavoidable.

Ms. Owens explained that "[r]eplacement of the existing bridge is necessary because the current bridge is a 'temporary bridge,' and it does not meet acceptable levels of service for this roadway and FHWA safety standards for bridges." She highlighted the efforts of State and county stakeholders to set the project in motion:

> In 2019, 30% design plans were submitted to the Department, and a site visit was scheduled. Over the next eighteen months, Department staff coordinated with Garrett County staff to identify all of the environmental impacts associated with the project and to explore ways to minimize the impacts. As stated in the letter from the Department to Garrett County dated May 14, 2021 (see attachment), the impacts were significant. Environmental and natural resource related concerns included the extent of the limits of disturbance; the extent of clearing and impacts to Old Growth Forest; impacts to a Use III Stream; consistency with the Scenic and Wild River designation; potential for adverse impacts to multiple rare, threatened, and endangered species; and compliance with the provisions of Section 4(f) of the U.S.

[5] All quotes in this paragraph taken from Department of Natural Resources. Exhibit 1, Swallow Falls Bridge Replacement Youghiogheny River Scenic and Wild Rivers Application: Environmental Assessment.

> Department of Transportation Act of 1966 relating to highway construction impacts on park and recreation lands.
>
> As part of the ongoing analysis of the project, and in order to perform the due diligence related to future action on the project, the Department requested a detailed justification of how and why the decision was made to replace the bridge by constructing a parallel road and bridge on DNR land, outside of the County's existing right-of-way. The County provided a copy of the Roadway Alignment Study prepared by GPI and dated October 2018. This Study is included in the County's application for an exception to the Scenic and Wild River. After the Study was analyzed by DNR staff, subsequent meetings with Garrett County and the consultants focused on the design alternatives, and how they would be important in justifying an exception to the provisions of the Scenic and Wild Rivers Act[.]

As noted, the SWRA and the Department's regulations forbid the type of development required, and also dictate the steps the Department must take in evaluating the proposal.[6] *See* COMAR 08.15.02.02A. Without the exception, the County would be limited to repairing the existing span. *See* COMAR 08.15.02.11.

The Department decided to grant a conditional exception, but not before entertaining public comments; conducting a public hearing aided by a PowerPoint display; reviewing environmental assessments by a private consultant that had been commissioned by the County; and receiving comments from the Maryland Department of the

[6] Title 8, Subtitle 15 of the COMAR govern the Youghiogheny Wild River. COMAR 08.15.02.11 provides that "Damming, dredging, filling, channelization, or other alteration of the river or its banks is prohibited except that involving the repair of existing bridges." COMAR 08.15.02.12A dictates that "[a]ny clearing of natural vegetation other than for logging is limited to that necessary for uses and developments permitted by these regulations[,]" and COMAR 08.15.02.12B reads that the "Department, in evaluating a plan for the clearing of natural vegetation, shall: (1) Take into account the effects of the proposed clearing on the scenic and wild character of the river; (2) Insure that natural vegetation on or near the shoreline remains undisturbed to screen the cleared area from the river and its contiguous shore; and (3) Consider the effect the clearing operations may have on the fish, aquatic, and riverine resources[.]"

Environment, Maryland Historical Trust, other departments within DNR and federal stakeholders.

Citizens at the public hearing were informed about the various "design alternatives" or options, ranging from "Reconstruct[ing]" the bridge on the existing alignment with various methods of accomplishing this (Options 1, 1B, 1C), or four options that entailed constructing a parallel bridge or "offset alignment" (Options 2, 2B, 2C, 2D). The county's engineering consultant indicated that "Options 2C and 2D were determined to have the best balance between environmental and community impacts, while maintaining the project goals."

The record demonstrates a significant back-and-forth between the Department, the Garrett County Department of Engineering, the engineering consultant for the County and other State entities. In 2019, for example, the Director of the DNR Environmental Review Program wrote to the county to propose the following items for consideration:

> (1) FCA Compliance and the Protection of Sensitive Resources: Even though Garrett County is exempt from the FCA [Forest Conservation Act], the State is not exempt, and compliance is required for all projects on State land. A Forest Stand Delineation (FSD) and Forest Conservation Plan (FCP) will be required.
>
> Permanent Right of Way Easement: The Maryland Board of Public Works (BPW) determines the value and considerations for the permanent land right (easement) to be granted to the County. DNR will make a recommendation to the BPW that the permanent easement be granted to the County without consideration, and is available to discuss required documentation (survey, appraisal, etc.) by the County to assist your efforts.
>
> ***

2) Issuance of the DNR Development Permit: As DNR must issue a development permit for this project, proper erosion and sediment control, stormwater management, and best management practices (BMPs) are critical, due to the sensitive location.

The project was also reviewed by the Maryland Department of the Environment (MDE), which responded to the County on March 11, 2021, after conducting a sediment and stormwater review. The MDE noted its concern with the dimensions of the proposed development area:

> It is alarming to note that the width of the limit of the disturbance is three times as wide as the existing roadway. Extensive grading is being proposed to accommodate stormwater management bioswales, the design and effectiveness of which are questionable as highlighted by the parallel storm drain system. The designer has performed an extremely extensive stormwater analysis of the project identifying ten study points and, in conclusion, has requested a number of stormwater "waivers."
>
> It is critical to consider that the Swallow Falls bridge and associated roadway are located within pristine parkland and surrounded by sensitive natural resources including highly erodible soils, hemlock, and woodland species of particular interest which should be protected.

On December 21, 2018, a Supervisor with the United States Department of the Interior, Fish & Wildlife Service ("FWS") wrote to the County's engineering consultant and stated that after FWS review: "This project as proposed is 'not likely to adversely affect' the endangered, threatened, or candidate species listed on your … species list because while the project is within the range of the species, it is unlikely that the species would occur within the project area that was submitted."

The record includes a 2022 critique of the County's application and Environmental Assessment from Mary Owens, the DNR Director of Planning and Conservation Programs, who indicated that "comments need to be addressed and the drawings and documents

revised[.]" One point raised by Ms. Owens related to ownership of the right of way ("ROW"):

> 2. In Section 1.1, the second paragraph states that the right-of-way is County owned and is most likely only a "prescriptive right-of-way". However, there is no explanation of the limits of the right-of-way, how ownership was determined, or what form of "ownership" the County believes it has. It is the Department's understanding that Penn Electric granted permissive use to the County for road and bridge construction in 1954, but the exact boundaries of the permitted use were never defined, and the right-of-way was never formally transferred to the County. Current land records show that the road and bridge are located on State-owned land that is part of Swallow Falls State Park. It appears that all of the construction options will involve temporary and permanent easements to construct and maintain the road and will result in a loss of park land. Review and approval by the Maryland Board of Public Works will be required. Additional details on current and future ownership and/or easements are needed.

The County provided a lengthy reply to DNR's critique, and, with respect to the concern about the right of way and easement, responded: "The [Penn Electric document granting a permissive use in 1954] … provides specific information regarding the terms and limits of the ROW established in 1954. It is GPI's [the County's project consultant] interpretation that a similar situation would occur for this project." This response in turn prompted an additional reply from DNR, which requested that the County further address, *inter alia*, impacts on the "wild or scenic character of the river or the corridor overall[,]" forest and vegetation impacts, and the size of the replacement span, which would be larger to accommodate a sidewalk and bicycle access.

The aforementioned draft memorandum from Ms. Owens that was addressed to the Secretary of the Department on July 5, 2023, provided the following for the Department's consideration:

Summary of Options

Option 2D is the option that the County is requesting the Department consider for the purposes of approving an exception to the Scenic and Wild Rivers regulations. This option minimizes the impacts associated with an offset alignment, which is necessary to keep the roadway open without detours during construction. Option 1 C involves fewer natural resource and parkland impacts than Option 2D because it does not use an offset alignment, and the new bridge would be constructed using the current alignment. This option would require a road closure and detours for approximately three months. Table 1 in Section 3.3.1: Environmental Impacts includes a summary of the impacts associated with each Option.

It should be noted that there is no option that avoids all forest clearing and specimen tree removal because the new bridge is wider and structurally deeper than the existing bridge. It is also important to consider that all options involve a single span bridge, so existing bridge supports in the middle of the Youghiogheny River will be removed, potentially positively influencing the River's wild and scenic characteristics.

Department Action:

The Scenic and Wild River Exception Application was accepted as complete on June 23, 2023, and as required by the regulations, a public hearing will be held in Garrett County on July 10, 2023. The County's exception request must be approved, denied, or approved with conditions by Aug. 22, 2023.

The Department's Decision

The Secretary rendered the Department's decision on August 18, 2023. In its decision granting the exception, the Department determined:

The exception request is necessary to allow for the replacement of the Swallow Falls Bridge. In accordance with the regulations, the Department has carefully reviewed the County's application and supporting documentation, including an alternatives analysis; held a public hearing in Garrett County to receive public comments; reviewed other comments received by the Department; and discussed the application with the Department's natural resource professionals.

As described in the County's application, this project involves the construction of a new bridge on an offset alignment in the area of the existing

> bridge. After giving thorough and thoughtful consideration of the river as a scenic and wild resource, and as described in detail below, the Department is conditionally granting the County's exception request.

The Department then explained:

> In accordance with COMAR 08.15.03.03A, the Department has determined that the County has satisfactorily demonstrated that:
>
> (1) The exception is consistent with the legislative intent of the Scenic and Wild Rivers Act and, is not injurious to the scenic and wild character of the river ; and
>
> (2) Special circumstances described by the applicant affect the project so that strict application would cause unnecessary hardship.

The Department cited the following factors as its rationale:

> First, while the project will have an impact on the area immediately surrounding the bridge, the impacts will be limited to only those that are the minimum necessary, and the design of the bridge will allow for the removal of the central pier structure from the middle of the river. Second, the scenic and wild character of the river and corridor as a whole will not be injuriously impacted by the construction of the new bridge in an offset alignment. Third, the need to maintain traffic flow through the area for safety and emergency access are special circumstances which are necessary for community health, safety, and welfare. Strict application of the regulations would cause an unnecessary hardship to the County, the community, and the general public that use the roadway. Finally, impacts to the old growth hemlock forest (Youghiogheny Grove Natural Area) of Swallow Falls State Park will be offset by the conservation and mitigation conditions provided below.

The Circuit Court's Decision

Appellants filed for judicial review in the Circuit Court for Garrett County. The court upheld the Department's decision, and set forth the following analysis:

> There is a dispute among the parties as to whether D.N.R. was acting in a quasi-legislative or quasi-judicial capacity in approving the County's request to build a replacement bridge, rather than fix the existing one. Reviewing the case law suggests to the Court the Department was acting in a quasi-legislative capacity. D.N.R. followed the process laid out in COMAR in

> considering the County's application to build a new bridge and in granting the exception request. *See,* Maryland Overpak Corps. v. Mayor and City Council of Baltimore, 395 Md. 16 (2006). The Department's decision here was made after the receipt of extensive documentary and opinion evidence. Clearly, the Department had the discretion to conditionally grant the County's exception request. There was sufficient justification for D.N.R. to conclude the exception was consistent with the Scenic and Wild Rivers Act and not injurious to the river. Strict application of the regulations would cause unnecessary hardship- particularly to the health, safety and welfare of those having to detour while a repair closed the existing bridge. The Department was acting within the scope of its authority and this Court cannot substitute its judgment when the agency decision is made by experts within the agency and is consistent with the law.

This appeal followed. We shall outline additional facts as they are relevant to the issues before us.

STANDARDS OF REVIEW

Appellants challenged the Department's decision seeking to overturn the action through four avenues of relief: judicial review, administrative mandamus, declaratory relief and injunction.[7] Regardless of the approach taken, this Court will review the Department's decision directly, and we must determine for ourselves whether that action should be set aside. *See Brawner Builders, Inc. v. State Highway Admin.*, 476 Md. 15, 30 (2021) (cleaned up). Hence, "[w]hen this or any appellate court reviews the final decision of an administrative agency such as the [Department], the court looks through the circuit court's ... decision[ ], although applying the same standards of review, and evaluates the decision of the agency." *Bert v. Comptroller of the Treasury*, 215 Md. App. 244, 263 (2013)

[7] It is not unusual for practitioners to file multiple actions, "because if they file one action and are wrong, a court may not treat the action as if it had asserted the proper basis for review." *MBC Realty, LLC v. Mayor & City Council of Baltimore*, 403 Md. 216, 230 (2008) (quotation marks and citation omitted).

(quotation marks and citation omitted). In addition to these general principles, there are additional and more specific standards of review that depend on the nature of the administrative proceeding under review. The level of deference to an agency's action depends on whether the agency acted in a "quasi-judicial" or "quasi-legislative" process.

DISCUSSION

"Quasi-judicial" or "Quasi-legislative"

The "function of a writ of mandamus is to 'compel inferior tribunals, public officials or administrative agencies to perform their function[s], or perform some particular duty imposed upon them ... [where] the party applying for the writ has a clear legal right' to the performance of that duty." *Talbot County v. Miles Point Property, LLC,* 415 Md. 372, 392-93 (2010) (quoting *Casey v. Mayor & City Council of Rockville*, 400 Md. 259, 317 (2007)). Appellants call on two versions of these equitable remedies – administrative mandamus and common law mandamus.

Appellants primarily maintain that the proper way to contest the Department's decision is through administrative mandamus. That mode of action is authorized by Title 7, Chapter 400 of the Maryland Rules. Maryland Rule 7-401 provides that "[t]he rules in this Chapter govern actions for judicial review of a *quasi-judicial order or action* of an administrative agency where review is not expressly authorized by law." (emphasis added). The key phrase, from Appellants' viewpoint, is "quasi-judicial," and they urge that the actions taken by the Department constitute a quasi-judicial act, which would be subject to

a less deferential review. "Administrative Mandamus is very similar to an action brought by a Petition for Judicial Review. The intent of the drafters of the Administrative Mandamus rules … was to make clear that judicial review of administrative quasi-judicial decision is the same whether or not there is a statutory right of judicial review." Arnold Rochvarg, *Principles and Practice of Maryland Administrative Law*, § 13.16 at 170 (2011).

"The parameters of judicial review under … Maryland law depend on whether an agency acted in a rulemaking/quasi-legislative or adjudicative/quasi-judicial capacity." John R. Grimm & Landyn Wm. Rookard, *How Federal and Maryland Courts Review Administrative Agency Actions*, 81 Md. L.Rev. 1224, 1232 (2022). Accordingly, we will elaborate further on the appropriate standards as we address the nature of the administrative proceeding below. The "practical importance of [the distinction between quasi-judicial and quasi-legislative] lies in its impact on the standard of review that courts must apply in resolving challenges to the administrative decision, essentially how much deference the court must give to the agency's determination." *Maryland Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island, LLC* (*"Four Seasons I"*), 425 Md. 482, 513-14 (2012). The *Four Seasons* Court recalled that "no one has been able to delineate, with precision and accuracy, an exact formula for determining the line of demarcation between the differences between legislative and judicial functions especially when mixed, blended, or combined functions are given, and exercised by, the same official, board, or agency[.]" *Id.* at 514 (cleaned up).

To reiterate, when an agency acts in a quasi-judicial capacity, administrative mandamus is the appropriate remedy where review is not provided by statute. *Dugan v.*

Prince George's County, 216 Md. App. 650, 654 n.2 (citation and quotation marks omitted), *cert. denied*, 439 Md. 329 (2014). In that instance, "the courts review the appealed conclusions by determining whether the contested decision was rendered in an illegal, arbitrary, capricious, oppressive or fraudulent manner." *Upper Marlboro v. Prince George's County Council*, 480 Md. 167, 181 (2022) (quotation marks and citations omitted). Further, such actions are examined to determine "whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine [whether] the administrative decision is premised upon an erroneous conclusion of law." *WV DIA Westminster, LLC v. Mayor & Common Council of Westminster*, 462 Md. 369, 397 (2019) (quotation marks and citation omitted). A decision is supported by substantial evidence "if reasoning minds could reasonably reach the conclusion from facts in the record." *Upper Marlboro v. Prince George's County Council*, 480 Md. at 181 (quotation marks and citations omitted).

"A legislative or quasi-legislative decision, as distinguished from a quasi-judicial or administrative decision, is also subject to court review, by invoking the court's original jurisdiction[,]" and is "subject to much more limited review." *Armstrong v. Mayor & City Council of Baltimore*, 169 Md. App. 655, 668 (2006). If the Department's decision was a legislative act, then review would focus on whether the department "acted within its legal boundaries."[8] *Upper Marlboro v. Prince George's County Council*, 480 Md. at 191. A

[8] It may well be that, in a particular limited instance, there may be a "distinction without a difference." In *Four Seasons I*, 425 Md. at 516, for instance, the Court concluded: (continued)

party aggrieved by a legislative action of this sort has a cause of action for declaratory judgment in the absence of judicial review by statute. *Dugan v. Prince George's County*, 216 Md. App. at 659 n.13.

In *Bucktail, LLC v. County Council of Talbot County*, 352 Md. 530 (1999), the Supreme Court held that the "determination of whether a local zoning authority is acting in an adjudicative or legislative manner is dependent upon the nature of the particular act in which it is engaged." *Id*. at 545 (quotation marks and citation omitted). "This determination is not based on whether the zoning decision adversely affects an individual piece of property but whether the decision itself is made on individual or general grounds." *Id*. The "greater a decisionmaker's reliance on general, 'legislative facts,' the more likely it is that an action is legislative in nature." *Miles Point Property, LLC*, 415 Md. at 387. Certainly, the distinction between "adjudicative and legislative facts is not easily drawn[,]" *id.*, but the record before us is consistent with a decision and process that is evidently "quasi-judicial" in nature. We explain.

Setting aside COMAR 08.15.03.03C, which provides that the "application procedure for an exception under this regulation is not a contested case hearing under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR

If, as we shall hold, the Board applied incorrect standards in making its determination —standards that caused it to exercise an authority beyond that which was delegated by the General Assembly—it would have "exceeded its statutory authority" if its decision was quasi-judicial and would not have been "acting within its legal boundaries" if its decision was quasi-legislative.

08.01.04[,]" we conclude that the procedures involved in the record before us possess the characteristics of a quasi-judicial procedure.

In *Kor-ko, Ltd. v. Maryland Department of the Environment*, 451 Md. 401 (2017), the Department of the Environment (MDE) issued a permit to Maryland Crematory, LLC ["MC"] for the construction of a crematory incinerator in Anne Arundel County, in the same industrial park containing the Kor-ko business. MC submitted toxic analyses, after which the MDE made a Tentative Determination to issue a permit. In addition to reviewing the various toxic analyses, information from federal EPA databases, and conducting a modeling exercise, the MDE conducted "an advertised legislative-style public hearing" and opponents of the project submitted written comments. *Id.* at 407.

Following approval of the permit application, Kor-ko and others filed an action for judicial review in the Circuit Court for Anne Arundel County. That court remanded the matter to the MDE, and this Court vacated the circuit court's order on MDE's direct appeal. The case reached our Supreme Court, which affirmed the ruling of this Court. What is relevant to the case before us is the Court's analyses of the appropriate standard of review and the manner of the MDE's proceedings.

The Court acknowledged that the "applicable level of judicial scrutiny depends often on the nature of the agency's process and/or action, e.g., quasi-judicial or quasi-legislative." *Kor-ko*, 451 Md. at 409. The Court reasoned why the matter before it was a quasi-judicial proceeding:

> The MDE's issuance of the construction permit to MC appears facially to fall in-between our recognized indicia distinguishing adjudicative from legislative agency processes or actions. By issuing the permit, the MDE

> affected directly the rights and responsibilities of the applicant, MC, not crematorium operators at-large. The State environmental statute, however, forbids contested hearings in this kind of permit application process, although the MDE's procedures did involve, for example, fact-intensive consideration of scientific information—the computer modeling of the dispersion and concentration of toxins from the crematory, the assumptions and conclusions of which could be, and were, contested via the submission of opposing public comments.

Id. at 410 (footnote omitted). The Court then recalled that it had applied the "standards of appellate review for quasi-judicial decisions to a permit decision by the MDE … governed by the same permitting statute" that was before it, although the "'organic statute' authorizes judicial review without a contested case hearing and does not set forth a standard of review." *Id.* at 410-11 (quotation marks and citations omitted).

The Court's decision in *Kor-ko* informs our analysis of the Department's action and how the Department's processes trigger the appropriate standard of review in this matter. Certainly, there are general policy concerns that were invoked by both parties to buttress their respective positions, as well as assessments and consultation with various stakeholders. And there was no discovery, cross-examination of witnesses, or an adversarial hearing; the regulations provide that the exception process is not a contested case.

On the other hand, this case centers on a specific, discrete, site within the Wild portion of the Youghiogheny River, which is carefully delineated in the Environmental Assessments submitted by the county. Indeed, the "permissive" use or easement granted to the county in 1954 by Pennsylvania Electric refers with exacting detail to the right of way, which corresponds to the bridge the county completed six years later. Further, as noted in

Kor-ko, the conflicting positions and opinions regarding the siting of the project and its effects "were[] contested via the submission of opposing public comments." *Kor-ko*, 451 Md. at 410. There was testimony that ranged from avoiding even minor impact on the specimen and old-growth trees by constructing a replacement bridge on the existing site and right of way and protecting the immediate environment, to calls for keeping some access across the river, thus advocating for the placement of a bridge parallel to the existing structure. Indeed, forceful testimony from the Chief of the Oakland Fire Department described runs to the "Swallow Falls State Park an average of three to four times a month during the summer months, either for ambulance assist with patients that's fallen, swift water rescues, you know, just searches, a little bit of everything." The existing span could not accommodate the Fire Department's heavy vehicles. Representatives from the Deep Creek Volunteer Fire Department, Garrett County Department of Emergency Services, the Garrett County Traffic and Transportation Advisory Committee and the Board of Garrett County Commissioners advocated against the closure of the existing bridge during construction of its replacement. The presenters also heard from a farmer who uses the bridge extensively:

> When we're foraging and harvesting at the Bray farm, we must cross the bridge 65 times in one day. And the amount of tonnage that we take from that side of the river to bring back to the home farm, you guys cannot imagine.
>
> I think the farm is very, very important. I think the --we are producing 9,000 pounds of milk a day. That's four and a half tons of food that we are putting out there for the American people to consume. And with that being said, it is not no just family farm anymore to a certain extent, but you don't realize how if we close that bridge how negative an impact that is going to have on my operation. It's going to be huge, maybe even put me out of business.

On the other hand, one of the Appellants urged consultation with the Youghiogheny River Advisory Board, a body that was recognized in the Youghiogheny River Management Plan drafted in 1996.[9] Appellants' also argued strenuously for keeping the project within the current right of way to minimize further degradation of natural and scenic resources. He recognized the "inconvenience" presented by the detours that would be faced by those who would incur vastly increased travel time to reach the opposite side of the river while the replacement was built on the existing site, but vigorously averred that that factor should not outweigh the "legal protections of the Wild Yough." The concerns of other citizens who were opposed to the offset alignment or any alternative to replacing the present bridge *in situ* were also comprehensively set forth.

Armed with input from the community stakeholders and Environmental Assessments, there were extensive deliberations by the principal County and Department officials as well as the assessment of site-specific options. Although the Department's regulations do not provide for a contested case *per se*, that absence from the proceedings before the *Kor-ko* Court did not alter its conclusion that the process before it was quasi-judicial. So it is with the proceedings in the case before us.

[9] The Youghiogheny Scenic and Wild River Local Advisory Board, "Maryland Scenic and Wild Rivers – The Youghiogheny" (1996). Available at https://dnr.maryland.gov/land/Documents/Youghiogheny1996.pdf (accessed May 7, 2026)

Accordingly, we conclude that because the Department's action was quasi-judicial, administrative mandamus is an available remedy for Appellants' challenge.[10] "An 'administrative mandamus' action serves as a substitute for an action for judicial review under Md. Rule 7-201, et seq., when neither statute nor local law creates a right of judicial review of a quasi-judicial order or action of an administrative agency." *Reese v. Dep't of Health & Mental Hygiene*, 177 Md. App. 102, 144 n.21 (2007). *See Headen v. Motor Vehicle Administration*, 418 Md. 559, 567 n.4 (2011). We need not determine whether common law mandamus would be available in this instance. "[C]ommon law mandamus is a remedy only in cases involving ministerial acts[.]" *Miles Point Property*, 415 Md. at 396-97 (citation omitted).

Review of Quasi-Judicial Action

Given the preceding discussion, we can revisit the appropriate standard of review:

> Whether by statute or by common law, courts look for three things when reviewing a *quasi-judicial* decision: (1) were the findings of fact made by the agency supported by substantial evidence in the record made before the agency; (2) did the agency commit any substantial error of procedural or substantive law in the proceeding or in formulating its decision; and (3) did the agency act arbitrarily or capriciously in applying the law to the facts—in essence, whether a reasoning mind could reasonably reach the conclusion reached by the agency from the facts in the record. With respect to the findings of fact, judicial review is highly deferential. With respect to determining legal error, it is much less so.

[10] *Cf.* Arnold Rochvarg, *Principles and Practice of Maryland Administrative Law*, § 13.16 at 170 (2011) ("intent of the drafters of the Administrative Mandamus rules … was to make clear that judicial review of administrative quasi-judicial decisions is the same whether or not there is a statutory right of judicial review.").

Kor-ko, 451 Md. at 411-12 (quoting *Four Seasons I*, 425 Md. at 514 n.15). *See* Md. Rule 7-403.

Adequate Findings of Fact and Conclusions of Law

Appellants insist that the Department failed to render adequate findings of fact and conclusions of law. They maintain that the Department's decision is sparse, lacks sufficient record support, and fails to fully set forth supporting grounds. We agree. In a "judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *United Steelworkers of Am. AFL-CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984). Where, as here, the agency's action was quasi-judicial, the Department was required to set forth adequate findings and conclusions. "Where the agency's factual findings are inadequate, the necessary facts may not be supplied by the parties, and neither we nor the circuit court will scour the record in search of evidence to support the agency's conclusions." *Elbert v. Charles County Planning Comm'n*, 259 Md. App. 499, 509 (2023) (cleaned up).

To be sure, in an appropriate case, we could agree with the United States Supreme Court, which has pronounced that a court may "uphold even a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Garland v. Ming Dai*, 593 U.S. 357, 369 (2021) (quotation marks and citation omitted). Such is not the case in the brief decision-letter issued by the Department.

The Decision does not adequately address the numerous "red flags" that are present throughout the record. As noted above, Mary Owens wrote on July 5, 2023, that "the impacts were significant. Environmental and natural resource related concerns included the

extent of the limits of disturbance; the extent of clearing and impacts to Old Growth Forest; impacts to a Use III Stream; consistency with the Scenic and Wild River designation; potential for adverse impacts to multiple rare, threatened, and endangered species[.]" The above-referenced review from the Maryland Department of the Environment also reflected the "alarm[]" the reviewer noted concerning the extent of the project. In a comment letter to the County dated February 8, 2023, and based on her review of the County's revised application and Environmental Assessment, Ms. Owens characterized as "disingenuous" the claim that the "recommended bridge replacement will not adversely impact the wild or scenic character of the river or corridor overall." In addition, the Department's decision gives short shrift to the effects of the project on an Irreplaceable Natural Area, of which this section of the Youghiogheny is a component, relegating the discussion of that statute to a single footnote.

On this record, the Department's explanation was not sufficiently clear or adequate to enable judicial review. It does not adequately address relevant concerns about the project. For this reason alone, we vacate the Department's decision and remand for a full consideration of the record and a thorough decision that sufficiently articulates its reasoning.

Notwithstanding our decision, we will briefly address Appellants' complaints about the sufficiency of the record or the Department's Verified Response and the county's standing to seek an exception.

Standing. Appellants maintain that the County was not entitled to file for an exception because it has no property interest, either by easement or otherwise, in the site

of the proposed offset bridge. They emphasize that the land is owned by the State of Maryland, and aver that the Department cannot seek an exception from its own regulations. The Appellants have described the County in this instance as a "straw man" to enable the Department to construct the bridge as planned. They insist that the exception protocol exists for the benefit of private landowners who seek to develop or repair their property that happens to be within the SWRA region.

This argument is without merit. Any "person" may seek an exception for development within an area embraced by the SWRA. The regulations do not dictate that an applicant must have a property interest in hand to apply for a use or development. Moreover, a county or an individual or "any other entity" qualifies as a "person." NR § 8-101(d). In the final analysis, although the County will have to obtain an easement for any offset-alignment use, it may wait until the exception is conditionally granted to do so.[11]

State of the Record; The Department's Verified Response. Appellants are concerned that the Environmental Assessment that is cited by the Department is not the same as that posted on the Department's website. We see no merit in this complaint. Appellants have pointed to no substantive differences between the two documents. Appellants also maintain that the record contains crucial "ambiguities" and "unanswered questions." For example, Appellants aver that the documentary underlay for the Department's action fails adequately to address whether the application and related assessments consider the legislative intent

[11] In 1954, the County was granted "permission" to use the right of way by Pennsylvania Electric for what would become the existing bridge. The bridge was built in 1960. It is unlikely that the resulting "easement" extends beyond the current right of way.

of the SWRA. Although we also conclude that substantial evidence does not support the Department's decision, especially the treatment of the effect of the Irreplaceable Natural Areas Act, because it overlooks critical citizen and staff commentary, we are confident that the record is complete, and that the state of the record, related legislative commands and a Verified Response will be thoroughly ventilated on remand. This review will also include the consideration of an appropriate Forest Conservation Plan.

Irreplaceable Natural Areas Program. On May 16, 2022, the Governor signed into law House Bill 784, which has been unanimously approved by both chambers of the General Assembly. The new law, Chapter 420, established the Irreplaceable Natural Areas Program and took effect on June 1, 2022. Codified at NR §§ 3-501-3-503, the INA Act was enacted "FOR the purpose of establishing the Irreplaceable Natural Areas Program in the Department of Natural Resources to preserve Maryland's native biodiversity on State-owned land managed by the Department; and generally relating to the Irreplaceable Natural Areas Program." House Bill 784 (Preamble).

The Fiscal Note for the legislation provided:

> Bill Summary: The purpose of the program is to preserve Maryland's native biodiversity on State-owned land managed by the department for current and future residents of the State. By July 1, 2023, DNR must adopt regulations to carry out the program, including regulations (1) designating irreplaceable natural areas on State-owned land managed by the department and (2) establishing management objectives for irreplaceable natural areas, including a map depicting boundaries for each area, a description of the unique features and threats for each area, and compatible and incompatible activities for each area.
>
> "Irreplaceable natural area" means an area with habitat necessary to support (1) a unique natural community or (2) a plant or animal species listed as threatened or endangered under the Nongame and Endangered Species

> Conservation Act. "Unique natural community" means an area that (1) has an assemblage of native plants or animals that is rare or declining in the State or (2) supports an unusually pristine example of a native ecosystem type. "Biodiversity" means the full range of living organisms native to a region.

Maryland Fiscal Note, 2022 Sess. H.B. 784 (Feb. 21, 2022).[12] Although the Department was directed to adopt regulations to implement the mandate of the Act by July 1, 2023, the regulations did not become effective until September 4, 2023. 50 Md. Reg. 769 (Sept. 4, 2023).

In the case before us, the Department's decision confines its analysis of the Irreplaceable Natural Areas Act to a footnote:

> The old growth hemlock forest of Swallow Falls State Park is proposed to be designated as an Irreplaceable Natural Area. Although the designation has not yet been finalized, the Department has nevertheless determined that this bridge replacement project is the continuation of an existing use and will not have a detrimental impact on the habitats or natural resources for which this area is to be designated as an Irreplaceable Natural Area.

We conclude that the Department's treatment of the Irreplaceable Natural Areas Act is arbitrary and capricious in that it acted unreasonably. There is no adequate recognition of the potential for ecological harm from the planned development. The regulations adopted by the Department to implement the INA Act provide for the incorporation by reference of the "Irreplaceable Natural Areas Portfolio (Maryland Department of Natural Resources, Wildlife and Heritage Service, March 2023), establishing management objectives for irreplaceable natural areas, including: a map depicting boundaries for each

[12] When conducting a historical review of a statute, we focus initially on archival legislative history. "Archival legislative history includes ... fiscal notes[.]" *In re K.K.*, 266 Md. App. 161, 192 (2025).

area; a description of the unique features and threats for each area; and compatible and incompatible activities for each area, is incorporated by reference." COMAR 08.03.17.0.

The Portfolio for the Lower Deep Creek Complex[13], at page 3, which includes the area surrounding the confluence with the Youghiogheny River includes the following:

> Inappropriate timber management in the vicinity also poses a potential threat. Both land uses would decrease water quality in the waterways and reduce the amount and type of forest cover needed by most of the rare species, particularly the small mammals, invertebrates, and birds. A significant increase in human disturbances near the large rock outcrops could also discourage use of those areas by species that are dependent on this severely limited type of habitat. Land uses should be limited to passive and/or low impact recreational activities, such as fishing, hunting, hiking, nature study, and environmental education.

Finally, while the Department reasons that the "bridge replacement project is the continuation of an existing use," *i.e.* another bridge, it overlooks the fact that the bridge replacement option cannot be a "continuation of an existing use" since the County's preferred bridge replacement cannot proceed without an exception. The only "continuation of an existing use," it would seem, is a replacement bridge on the existing site.

We also hold that the Department's decision is not supported by substantial evidence based on the record as a whole. While the Environmental Assessments and opinions from other agencies can be read as supporting the decision, assuming it were sufficiently articulated and reasoned, there are competing narratives that need to be addressed, including warnings about the ecological impact of the preferred option.

[13] Lower Deep Creek Complex (Maryland's Irreplaceable Natural Areas: https://dnr.maryland.gov/wildlife/Pages/ina.aspx (Maps and descriptions for each area are provided under the Garrett County chapter of the Portfolio).

Substantial evidence to support an administrative decision or action must account for "whatever in the record fairly detracts from the weight of the evidence offered by" the County and the Department. *Board of R. R. Trainmen v. Baltimore & Ohio R. Co.,* 248 Md. 580, 601 (1968). Evidence in the form of public comments opposed to the project, concerns raised by DNR staff and the MDE, and references to the overall legislative commands that should have informed the Department about harming the fragile ecology clearly detract from the strength of the Department's decision.

Conclusion

We hold that the Department's exception decision does not comply with the requirement of adequate findings and conclusions. We also conclude that the Department's decision is arbitrary, capricious and unsupported by substantial evidence based on the record as a whole. Given this, we vacate the circuit court's order and direct the court to remand this matter to the Department of Natural Resources for a renewed and thorough examination of the County's application for an exception.

JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY VACATED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REMAND TO THE DEPARTMENT OF NATURAL RESOURCES FOR PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.