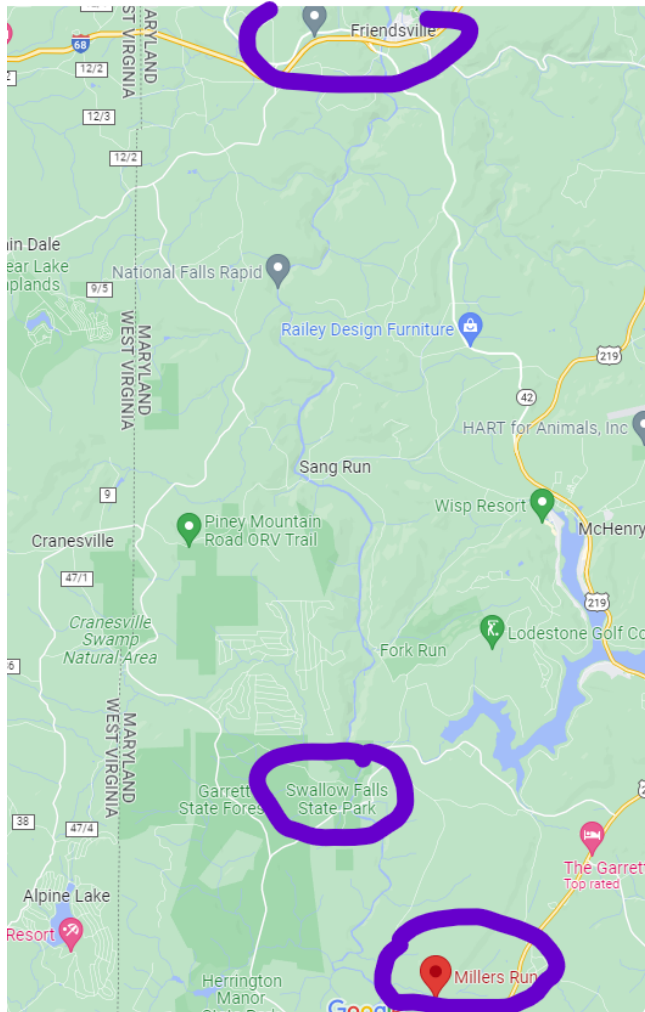


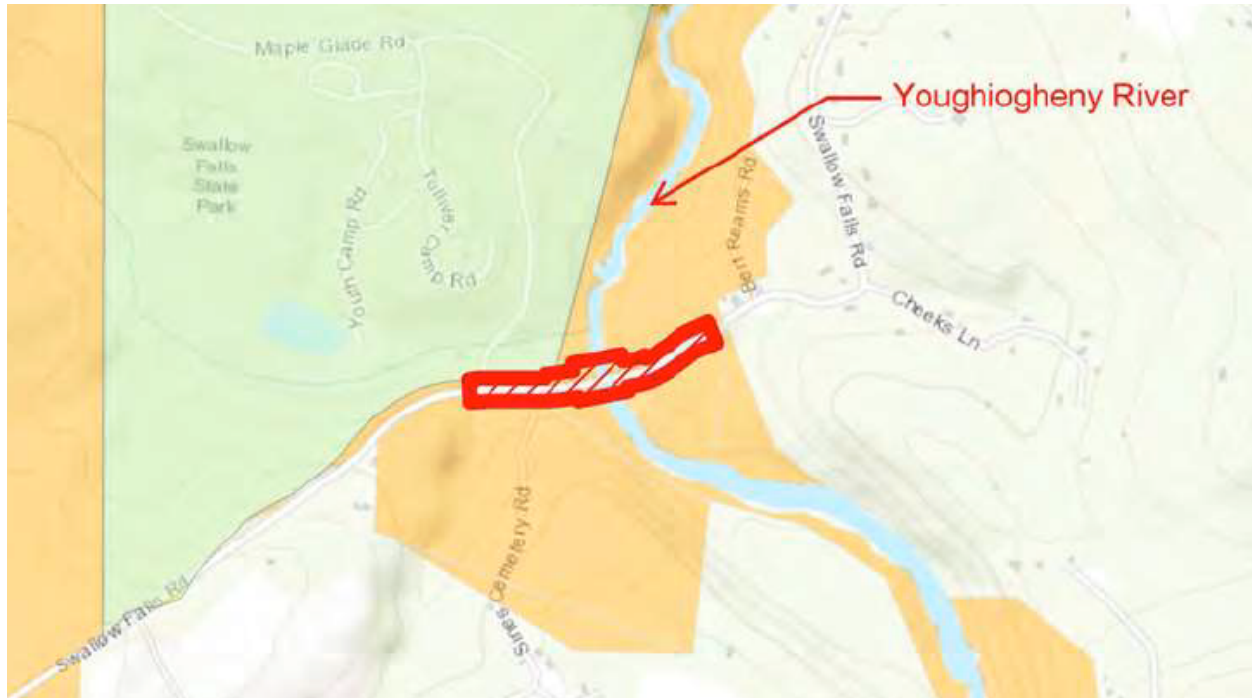
<p>YOUGH FARMS, LLC 492 Burnett Road Oakland, MD 21550</p>	*	
<p>And</p>	*	
<p>OLD GROWTH FOREST NETWORK 25705 Edgeview Road, Royal Oak, MD 21662</p>	*	Civil Action No.: _____
<p>And</p>	*	
<p>STEVE STORCK 492 Burnett Road Oakland, MD 21550</p>	*	
<p>Petitioners</p>	*	
<p>FOR JUDICIAL REVIEW OF THE DECISION OF Josh Kurtz, Secretary Maryland Department of Natural Resources Tawes State Office Building 580 Taylor Avenue Annapolis, Maryland 21401</p>	*	
<p>IN THE CASE OF SWALLOW FALLS BRIDGE REPLACEMENT - SCENIC AND WILD RIVERS EXCEPTION APPLICATION 2018DNR139 (FMIS#GA415B21)</p>	*	

Pursuant to Maryland Rules 7-401, et. seq. and Maryland Code, and Department of Natural Resources § 1-503, Petitioners hereby file this Petition for Administrative Mandamus, Declaratory Relief and Injunction, and for their reasons state:

1. Pursuant to Maryland Rules 7-402 this Petition is required to (and intended to) comply with the provisions of Rules 7-202 and 7-203. “An action for a writ of administrative mandamus is commenced by the filing of a petition, the form, contents, and timing of which shall comply with Rules 7-202 and 7-203.” Rule 7-402.
2. On August 18, 2023, The Department of Natural Resources, by Secretary Josh Kurtz, issued a final determination providing exceptions to the environmental protections to the Youghiogheny Scenic and Wild River Corridor, thereby allowing the construction of a new bridge in an offset alignment in replacement of the existing Swallow Falls bridge. The offsetting alignment requires significant clearing, grading and loss of trees and habitat immediately adjacent to and on both sides of the Youghiogheny River.
3. The area surrounding the Swallow Falls bridge is included in the section of the Youghiogheny that is designated as a wild river pursuant to Md. Code Ann., Nat. Res. § 8-408. “That segment of the Youghiogheny River between Millers Run and the southern corporate limits of Friendsville is designated a wild river.”



4. The Swallow Falls bridge is just South and East of the Swallow Falls State Park and is on land owned by the Department of Natural Resources but outside of the park boundaries.



5. The Wild River portion of the Youghiogheny River is among the most protected areas in Maryland and is the subject of both a Management Plan and regulations concerning the use and development that would affect the primitive qualities and characteristics of the wild river segment of the Youghiogheny River and the adjacent scenic corridor along its banks. Md. Code Ann., Nat. Res. § 8-409.
6. The proposed construction is entirely within the Zone 1 - the most highly protected portion of the Wild River corridor. “(a) Those areas within the scenic corridor of maximum remoteness and ruggedness which are generally inaccessible by road or trail and where shoreline and adjoining lands of the wild river are essentially primitive in character, and (b) The wild river and its bottom;” Md. Code Regs. 08.15.01.04, .08.15.01.06B-M.
7. The purpose of the Wild and Scenic Rivers Act “is to preserve and protect the natural values of these rivers, enhance their water quality, and fulfill vital conservation purposes

by wise use of resources within their surrounding environment.” Md. Code Ann., Nat. Res. § 8-401.

8. Among the significant regulatory restrictions applicable to the Wild River corridor:

- a. “Roads are not permitted except those necessary to reach developments permitted in these regulations. Setback lines established elsewhere in these regulations may not be crossed except where topographic conditions prevent any other access.”

Md. Code Regs. 08.15.02.13.

- b. “Damming, dredging, filling, channelization, or other alteration of the river or its banks is prohibited except that involving the repair of existing bridges.” Md. Code Regs. 08.15.02.11 (emphasis added).

- c. “Any clearing of natural vegetation other than for logging is limited to that necessary for uses and developments permitted by these regulations. B. 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 by: (a) Altering the temperature of the water; (b) Causing siltation; (c) Pesticide or fertilizer contamination; or (d) Any other deleterious effect.” Md. Code Regs. 08.15.02.12

9. The restrictions in the Wild River Scenic Corridor apply to both public and private lands within the corridor. “These regulations also apply to public land located within the scenic corridor.” Md. Code Regs. 08.15.02.16.

10. The proposed work for which an exception was granted involves cutting and clearing a new road North of the current road and placing a new bridge North of the current bridge, with attendant clearing, destruction of habitat, loss of specimen trees and environmental damage to the river basin.
11. There are extremely limited exemption provisions in the regulations. ‘Uses existing prior to May 27, 1976 can be continued pursuant to Md. Code Regs. 08.15.03.01, modification of an existing use must be analyzed as a new development.’ Id.
12. In this matter the Secretary proceeded under the Exceptions provisions set forth in Md. Code Regs. 08.15.03.03. That provision places a heavy burden on the applicant to demonstrate 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 as fully described by the applicant affect the land or its structure so that strict application of these regulations, in the case of the applicant only, would cause unnecessary hardship or deprive him of all reasonable use of his property.”
13. The Exceptions provision specifies that the determination is not a contested case pursuant to the Administrative Procedures Act. It does not specifically provide for judicial review. “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 08.01.04.” Id.
14. Petitioner Storck is a resident of Garrett County and a Member of Yough Farms, LLC. He submitted a public comment and participated in the July 10, 2023 hearing in Garrett County, which was the only public hearing involved in the decision. His comments

appear at 46:50 of the public hearing which appears on Youtube at

<https://youtu.be/OzsK2Gq8T5o?si=VmB0fKUMad0Dy5wO>.

15. Through Yough Farms, LLC, Petitioner Storck owns the closest parcel of privately owned land to the proposed project which abuts the river. His parcel is bounded to the North and South by lands owned by the Department of Natural Resources, and, as is the bank across the river from his parcel.
16. Petitioner Storck has a special interest as an adjoining land owner and additionally meets the standing criteria set forth in Md. Code, Nat. Res. § 1-503. “Any other person, regardless of whether he possesses a special interest different from that possessed generally by the residents of Maryland, or whether substantial personal or property damage to him is threatened. However, an individual citizen either shall reside in the county or Baltimore City where the action is brought, or shall demonstrate that the alleged condition, activity, or failure complained of affects the environment where he resides.”
17. Yough Farms, LLC is an adjoining land owner to the proposed project, and is additionally the owner of the only privately held parcel of riverfront land near the proposed site. The value of the property is directly tied to its direct ties to a Maryland Wild River, and would be diminished by the detrimental impact of the proposed project.
18. OLD GROWTH FOREST NETWORK is a Maryland non-stock company whose members are devoted to protecting undisturbed woodlands like the kind that are present in the Wild River corridor and at the proposed bridge site. Its Members participated in the public comments held in relation to this project.
19. This Court is empowered to provide equitable, mandamus or declaratory relief for the

failure on the part of a State agency to enforce environmental laws and regulations. “Any person given standing by subsection (a) of this section may bring and maintain an action for mandamus or equitable relief, including declaratory relief against any officer or agency of the State or political subdivision for failure on the part of the officer or agency of the State or political subdivision to perform a nondiscretionary ministerial duty imposed upon them under an environmental statute, ordinance, rule, regulation, or order, or for their failure to enforce an applicable environmental quality standard for the protection of the air, water, or other natural resources of the State, as expressed in a statute, ordinance, rule, regulation, or order of the State, or any political subdivision.”

Md. Code Ann., Nat. Res. § 1-503.

20. The Secretary of the Department of Natural Resources is affirmatively charged administering the Wild Rivers provisions. “The Secretary shall administer the provisions of this subtitle.” Md. Code Ann., Nat. Res. § 8-402.

WHEREFORE, Petitioners request that this Court enter appropriate relief requiring the Secretary of the Department of Natural Resources to withdraw the current grant of an Exception and to conduct a review in accordance with the purposes of the Scenic and Wild Rivers Act and according to the statute and regulations promulgated thereunder.

Respectfully submitted,

J. Dirk Schwenk /s/ _____
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This is an initial pleading for which no certificate of service is required.