



TOWN OF ULYSSES

PLANNING AND ZONING DEPARTMENT

STAFF MEMO

TO: Town Supervisor, Katelin Olson
FROM: Niels Tygesen, Planner
DATE: July 24, 2026
SUBJECT: Staff 05.07.2026 Memo to Town Board RE Proposed Smith Woods Critical Environmental Area Designation in Relation to Recent DEC Wetland Appeals and Karl Klankowski's Comments

BACKGROUND

Staff was requested and provided a comprehensive memo to the Town Board (TB) related to the potential designation of Smith Woods as a Critical Environmental Area (CEA). Since the date of that memo there have been changes at the State level in relation to previously identified wetlands. Additionally, it appears there may be need for clarification on some elements in that memo to the TB in light of Karl Klankowski's comments submitted today. I won't automatically request this memo be included as part of the record for your current deliberations, more for clarification to Board members as needed; but as I won't be attending the TB's 07.28.2026 meeting, deferring to you if/how it will be shared with other Board members and/or members of the public as needed.

I concur that on page 4 on the 05.07.2026 memo the third paragraph under 'The Subject Site' states "According to DEC's Environmental Resource Mapper (ERM), the site has been identified as a significant natural community (beech-maple mesic forest) with high quality occurrence of uncommon community type significance (image below). It also appears there may be State jurisdictional wetlands on and adjacent to the subject site (image below). There does not appear to be any State or USGS designated streams on or adjacent to the subject site. US Fish and Wildlife have not identified any federal wetland on or adjacent to the subject site, but the Town's official local wetland map has identified wetlands and a stream adjacent to the subject site (image below). The regulations specific to streams and wetlands and their related buffers are listed under CTU 212-124".

This is correct and factual.

For DEC's Environmental Resource Mapper, [please see this link](#).

For USGS 7.5' quadrangle maps (as per definitions, more info below), [please see this link](#).

For USFW Mapper, [please see this link](#).

For the Town's official wetland maps, [please see this link](#).

And for the Town's specific regulations to streams and wetlands and their related buffers, please see [CTU 212-124](#).

The phrase, "adjacent to the subject site", used in the memo is a subjective term and open to interpretation. When looking at both USGS and State maps, you will notice both a solid blue line in the USGS maps (designates a perennial stream by definition, more info to follow), and a designated Class C stream by DEC that impacts parcel 13.-4-2.2 which is directly adjacent to the east of the Smith Woods parcel. The terminus of both

agencies' delineations appears to be approximately 1,300' from the stream segment identified by the County and in the Town's official wetland map.

As the 05.07.2026 memo was already 11 pages long, and perhaps 10 pages longer than preferred by Board members, I did not feel it was warranted to get into the weeds of zoning regulations for environmental protections standards nor my professional opinions on how a municipality should best implement said protections. However, for the sake of providing clarification if needed for both the 05.07.2026 memo and its references to regs and data sources, I'll delve into that in this memo as part of the discussions related to amending and implementing Town regs and guidelines vs. the Smith Woods CEA project per se.

The Code of the Town of Ulysses (CTU) 212-124.B.4.c does not define streams; the definitions of streams (there are three) are housed under CTU 212-4. What CTU 212-124.B.4.c does, is it acts as a directive on the classification of perennial and intermittent streams.

A bit of history in the Town's zoning regs amendments might be warranted here.

It appears the Town first adopted regs related to stream buffer protections on a town-wide level in 2005. It established one definition of 'stream' as, "For the purposes of this Zoning Law, a water course that carries water for six (6) months or more throughout a year. The edge of the stream is the bank of the stream or the edge of the embankment if the stream is more than ten (10) feet below grade", which is essentially the same as the current definition of 'stream'. It also established similar language under what is now CTU 212-142.B.4.c that stated classifications of 'impermanent' and 'permanent' streams would be by 'USGS topo maps'. At the time, this classification directive was needed as the definition of stream did not clarify or define the difference between 'impermanent' and 'permanent' streams, but the code established distinct buffer requirements between the two.

It appears that, as with most significant structural deficiencies with the Town's current zoning regs, issues with the definitions of streams and the directive on how to classify them appeared in the most recent amendments adopted in 2019 in tandem with other actions of the previous Town Board in 2019.

The three current definitions of streams are:

1. 'Stream', "A watercourse that carries water for six months or more throughout a year. The edge of the stream is the bank of the stream or the edge of the embankment if the stream is more than 10 feet below grade";
2. 'Intermittent Stream', "Surface water drainage channels with definite bed and banks in which there is not a permanent flow of water [and is represented as a dashed line on United State Geological Survey (USGS) 7.5 Minute Quadrangle maps]"; and
3. 'Perennial Stream', "A stream that flows continuously throughout the year in a natural or man-made channel [which is represented as a solid blue line on United States Geological Survey (USGS) 7.5 Minute Quadrangle maps]".

Noted issues in the definitions the Town should consider when updating related regs/guidelines:

- By structure, 'intermittent' and 'perennial' would appear to be subsets of 'stream', though the definition of 'stream' appears to be regurgitative of the 2005 definition and failed to account for the nuance adopted in 2019.
- Not all intermittent streams will carry water for six months or more throughout a year, which the current definitions create an inherent conflict – if the USGS 7.5 Minute Quadrangle maps delineate a dashed stream which code defines as intermittent, and that stream carries water for less than six months a year, is it a stream?

- Whether or not the Town should officially recognize and utilize old maps for stream protections (and wetlands, more on this specific topic below) is a larger discussion that should be officiated by qualified (degreed, certified, and seasoned) environmental professionals. Having had the privilege of working side-by-side with numerous said professionals on a consummate basis for over two decades, I would presume this would not be recommended.
- If there are to be definitions of 'intermittent' and 'perennial' streams (this too is a much larger discussion as it pertains more to establishments of buffers), the Town should then also consider adding a definition of 'ephemeral' stream, and the definition of 'stream' should be broad and not definitive of the amount of water flow in a year. The Town should also consider determining whether or not to define what a stream is not, e.g. water courses which were created entirely by artificial means, such as irrigation ditches, roadside ditches, or storm or surface water run-off features, etc.

The current directive on classification of streams (CTU 212-124.B.c) was also amended in 2019 to read, "Classification of perennial and intermittent streams will be determined by U.S. Geological Survey topographical maps or determination by a New York State Licensed Geologist or Tompkins County Soil & Water Conservation Zone. Intermittent, also known as "seasonal," streams require at least a minimum of 25 feet of setback on each side of the stream, extending from the stream bank toward the uplands. Perennial streams are required to have at least a minimum 50 feet of buffer on each side of the stream, extending from the stream bank toward the upland. Certain zones vary from these general setbacks".

Noted issues in the directive the Town should consider when updating related regs/guidelines:

- If the Town will continue to define 'intermittent' and 'perennial' streams, and if those definitions continue to state that intermittent streams are as identified by a dashed lines and perennial streams are as identified as solid lines on USGS 7.5 Minute Quadrangle maps, there is discrepancy between the definitions and the classification directive that should be resolved.
- Whether or not the Town should utilize a NYS licensed geologist and/or Tompkins County Soil & Water Conservation District (TCSWCD), should be part of the larger discussion noted above in relation to utilizing USGS maps; I would contend no. Where the use of a NYS licensed geologist and/or Tompkins County Soil & Water Conservation District goes awry, is neither inherently have the skill set or qualifications to assist plans reviewers and zoning administrators in best determining stream types when there is nuance or discrepancy, identifying top of bank/mean-high-water-marks etc. When needed/required for development projects, the Town should consider amending the code to be clear, transparent, and directive on when, how, and who will do a 'special study/environmentally sensitive area study/critical area study' etc. The Town should consider adding a definition of 'qualified professional', something along the lines of, "a person with experience and training in the applicable field who possesses a Bachelor of Science or Bachelor of Arts or equivalent degree in biology, engineering, fisheries, ecology, environmental science, resource management, or related field, and who has at least two additional years of full-time related work experience, and who has professional certifications and credentials necessary to prepare plans". The Town should also consider adding specific qualifiers for those needing to perform wetland/stream delineations, geotechnical reviews, landscape/architectural reviews etc. And the Town should consider prescriptive language in what exactly needs to be provided in the reports/studies.
- For what it's worth as previously recommended, it would be prudent if the Town considered amending its regs on stream classifications to align more with State regs and DEC as under NYCRR 6.X and CLNY 43-B – classify stream categories in part as applicable as 'waters of the state', salmonid (trout) habitat streams (both as overall habitat and those for spawning), non-fish habitat streams that are sources of drinking water/recreation, and other non-fish habitat streams that aren't sources of drinking water/recreation etc.

- The Town should strongly consider eliminating all points of conflict in its codes to the maximum extent feasible. It is not good practice to have one section of code state that a buffer to a particular designated stream is, e.g. 25', and have another section of code state that the buffer to that same designated stream is something else. In the event of conflicts, the Town should consider amending the code to include a provision that recognizes the potential of conflicts in the regs and how to address them. Most basic zoning codes have a provision along the lines of, "Where a conflict exists between this chapter and other regulations, the more stringent requirements shall apply. If the requirements of any section of this title conflict with any other section, the more restrictive requirement shall apply. If, in the opinion of the planning director (BZA most likely in this Town's case), neither section is more restrictive, the planning director shall determine how to apply the code".

The statement, "There is no determination by a New York State Licensed Geologist included in this document (05.07.2026 memo to the TB) to indicate that the information taken from the Town's local wetland map qualifies as a stream" is also true; I did not engage the services of a NYS licensed geologist nor staff at TCSWCD to review the 2012 maps and classify the delineated stream for the memo as it did not appear pertinent to the project at hand. The extent how the County developed the 2012 maps, and the extent the Town had a qualified professional review the maps prior to its adoption in 2019 is unclear.

Noted issues in the Town's official map of wetlands the Town should consider when updating regs/guidelines:

- It is never good practice for the top agency in a municipality to pass a resolution adopting a map/graphic/table/etc. that directly impacts a set of codified regulations without a concurrent amendment to said regulations that recognize and identify said map/graphic/table/etc.
- Whether or not the Town should continue to have an official wetland map should be part of the larger discussion officiated by qualified environmental professionals noted above; I would contend no. The fundamental issue with adopting an official wetland map as a static legal boundary is that wetlands are dynamic ever shifting ecosystems that cannot be accurately captured by fixed, permanent lines on a map. Natural landscapes are constantly evolving especially in extreme weather events and climate change, relying strictly on an official regulatory map inevitably creates a conflict between static legal documentation and actual, on-the-ground environmental conditions. Best practice is wetland maps should be used as informational maps only, and when development occurs near an identified or perceived feature (again the Town should consider having its regs be very clear on what 'near' means) require a qualified professional perform a delineation and report.
- Another fundamental error with the adoption of this map as delineated is that it should have been for wetland information only, not streams (further discussed below).

The statement, "Tompkins County Soil and Water Conservation Zone has told Town staff and myself by email several times "Tompkins County Soil and Water Conservation Zone does not designate streams in Tompkins County", is also true. However, as code identifies TCSWCD as a source to classify streams, when there have been development projects where there appeared to be discrepancy in stream delineation/type maps for a subject property, whether a project was under administrative review or under Board review, staff have requested TCSWCD provide guidance. Often guidance is carefully phrased with suggestions or recommendations for plans reviewers vs firm classification/designations.

The statement, “Still the Staff report uses stream data from a source not recognized by the Town Zoning and ties it to a reference in Town Zoning to try to convey that this is a valid stream requiring CTU 212-124 setbacks” is not entirely correct. The first part of the statement, “Still the Staff report uses stream data from a source not recognized by the Town Zoning”, in this instance, is correct – the 2019 adopted wetland map is not a recognized source in the Town’s zoning code, and by default neither is the stream data provided in that map. The later part of the statement, “and ties it to a reference in Town Zoning to try to convey that this is a valid stream requiring CTU 212-124 setbacks” is not correct, or in the case of misinterpretation, was not intended. I do not believe that the 05.07.2026 memo conveys the stream identified by the County and delineated in the Town’s official wetland map is a valid stream requiring setbacks. It is, however, a correct and factual statement in the 05.07.2026 memo that the “Town’s official local wetland map has identified wetlands and a stream adjacent to the subject site”, please see Image 6 of that memo that provided a detailed view of the Town’s official wetland map along with the link to the Town’s wetland maps noted above to observe delineated wetlands adjacent to the NE and SE of the subject site along with a stream adjacent to the SE of the subject site. Please also see Image 1 below of this memo for a detailed view of the subject site and delineated stream by Tompkins County’s environmental mapper (more info below for relevance), [please see this link for their map](#).

It might be helpful to note, the third paragraph noted in the 05.07.2026 is extremely compact and filled with a lot of information, noted items as they appeared in order:

1. DEC’s Environmental Resource Mapper (ERM), identifies the site as a significant natural
2. Community;
3. There may be State jurisdictional wetlands on and adjacent to the subject site (more/updated info below);
4. There does not appear to be any State or USGS designated streams on or adjacent to the subject site;
5. USFW have not identified any federal wetland on or adjacent to the subject site;
6. The Town’s official local wetland map has identified wetlands and a stream adjacent to the subject site; and
7. The regulations specific to streams and wetlands and their related buffers are listed under CTU 212-124.

Information under item 7 was intended to act as transparent guidance to TB members, and any engaged members of the public, to the Town’s regs as germane to the subject matter provided in that paragraph. The Town does not currently have prescriptive protection standards for DEC’s designation as a significant natural community, but it does have protections standards for wetlands and streams.

The statement, “In this case, the non-qualified stream stops outside the Smith Woods property boundary, so even if its existence was valid, it would not affect Smith Woods”, might not be entirely correct depending on context. As it applies to the designation of Smith Woods as a CEA, it depends. If the Town moves forward in the EA utilizing only the SEAF this may be correct, but if the Town moves forward in the EA utilizing a GEIS as recommended, the information and data gathered under a more robust scoping process may determine otherwise. Should there be a development project in or around Smith Woods, it depends on scope as to whether the ‘non-qualified’ stream would have buffers applied to it, more info provided below.

The statement, “In 2023, the Jacksonville Community Park was not so fortunate. Inclusion of another unqualified stream in their data submission package cost them all the parking along the entrance road to their park”, requires more discussion as neither inter-agency review nor statutory authority is often discussed as it relates to the BZA’s project review and final decision. While the noted ‘unqualified stream’ does not appear on the USGS 7.5’ quadrangle maps, it does appear on the County’s environmental mapper, please see Image 2 below of this memo. Why inclusion of this information in this memo is germane is that all actions of the BZA are subject to 239 review. The subject site is impacted by federally and locally designated wetlands and the

Town's regs under [CTU 212-115.A](#) require a 100' buffer (please see image 3 below of this memo) which the applicant requested a reduction to 25' for parking areas and a reduction of 70' for a restroom. The project was submitted to the County for their review, and they responded stating they determined the project would have a significant county-wide or inter-community impact and recommended buffers for an identified intermittent stream, ut dict., "We recommend that the Town require the applicant to locate the proposed parking area and any new driveway access outside of a 50-foot buffer of the intermittent stream. This modification is recommended to preserve and protect water quality". The only way for a Board to override such comments from the County is to have a supermajority. The BZA, after much deliberation, did consider the County's comments and granted the requested variances and with a supermajority approved a 25' buffer not a 50' buffer as recommended for the parking areas. The BZA did however then place a condition that there would be no more than 15 vehicles parked on the subject lot. The BZA has statutory authority under [CLNY 62.16.267.B.4](#) to impose reasonable conditions and restrictions in their decisions as they relate to the use of property. Any applicant or member of the public that is aggrieved at a decision of the BZA, including conditions placed upon approvals, then has a right to appeal that decision to State Court.

Last, the statement "A second problem with this Staff stream source is to take the data from "Ulysses Wetlands Map" from the Town web site that was adopted on 23 July 2019 by the Town Board... No where in the above map title or adoption sequence does this say the adopted map is also a source of valid stream data", is not entirely correct. As previously noted, the 05.07.2026 memo correctly noted the Town's official wetland map included stream data near the Smith Woods property, but it did not, nor was it the intention to, state that the identified stream was 'valid'.

It should be noted that from the time of the memo, due to appeal, DEC's informational maps may not be relevant and the TB may want to only consider DEC's previously mapped areas, please see Image 4 below of this memo. Using the data previously provided, it does not appear that there are Federal, State, or Local designated wetlands on the subject site, which could impact deliberations on criteria related to establishment of Smith Woods as a CEA. This updated information of no known wetlands on site as prescribed by the Town's zoning regs would then appear to conflict with other sources of data including Tompkins County's UNA data sheet. This is a prime example of why agencies with authority should always seek and require the most relevant data for their projects. It should be expected, that if the TB were to hire a professional wetland biologist to perform a wetland delineation and report using the USACE standards, they would find a wetland and perhaps indications of a type of stream, though no older mapping source has identified them.

Board members should anticipate, that when reviewing development proposals that are subject to 239 review and/or SEQR, additional materials beyond the Town's codified regs may be incorporated or taken into consideration, what the end result of that project review and EA happens to be is up to that Board. It should also be anticipated, that individual Board members will disagree, especially when some members are subject matter experts in a related field with current knowledge of best available sciences and best practices compared to older regulations. When deliberations stall, it's best to request qualified professionals review projects and proposed recommendations, and then to foster an environment where said qualified professionals are treated with the utmost respect.

Additional comments on potential code amendment related to protection of streams and wetlands

Staff would recommend the Town consider the additional following items when/if there is a code amendment related to protection of streams and wetlands:

- Develop a set of informational maps that identify streams, wetlands, steep slopes etc., note these should be labeled as informational and not adopted or codified as official maps.
- Define stream in closer alignment with NYS' classification process and develop buffers accordingly.
- Define wetland in close alignment with USACE, note, there currently is no definition of wetland.
- Apply protections for wetlands not by the agency that has previously mapped them, but by USACE standards i.e. Cat I II III IV – further require habitat score analysis to be provided, have code be prescriptive on buffer requirements based on category type in connection with habitat score.
- Provide stated buffer requirements be minimums with allowances for PB and BZA to increase buffers if needed based on scientific data and use of land.
- Provide prescriptive regs for mitigation sequencing when impacts to streams, wetlands, and/or their buffers is unavoidable.
- Provide prescriptive ratios for improved, rehabilitative, and/or created stream beds, wetlands, and/or their buffers.
- Establish restrictive covenant requirements to be placed on property after land development approvals that would inform future property owners of environmentally protected features.
- Establish prescriptive regs for 5-year monitoring of alterations to streams/wetlands/buffers with bonds to ensure that re-planting and related improvements meet the objective of a decision granting impacts to streams/wetlands/buffers.
- Provide prescriptive regs for exemptions and exceptions and when/how they are to be administered.
- Establish a sunset clause of five years for related professional delineations and reports.

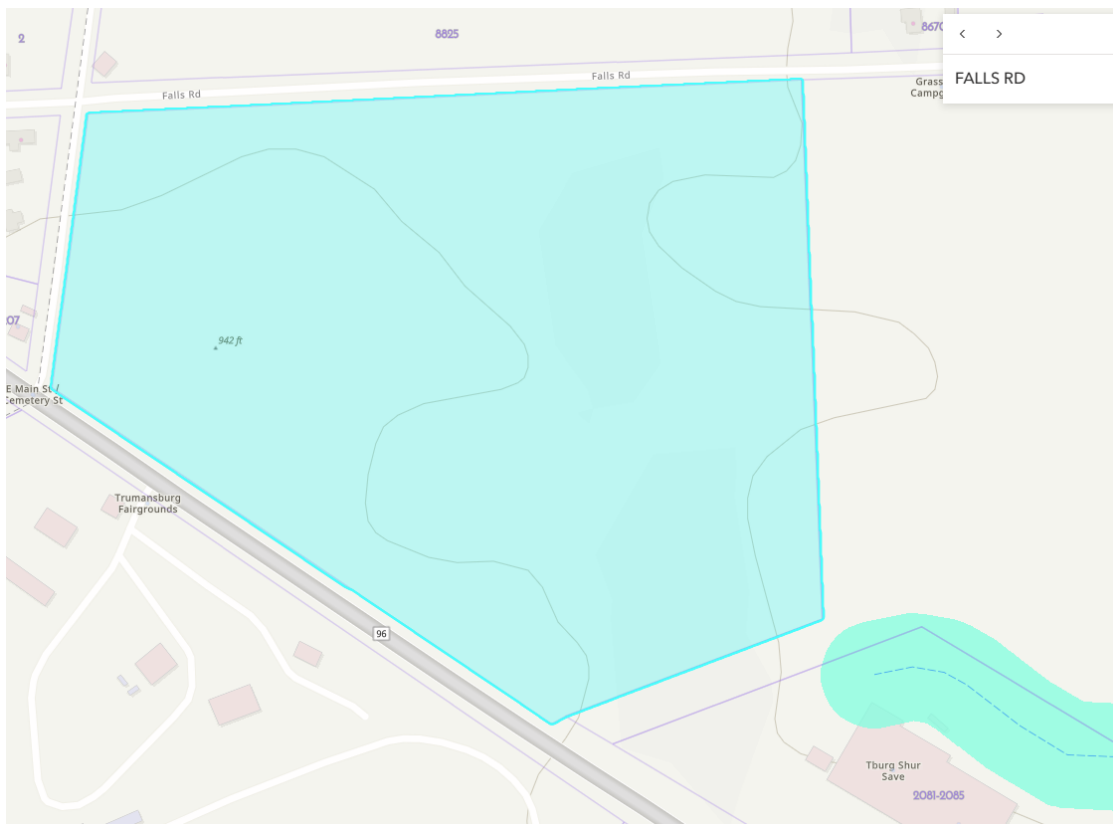


Image 1: Tompkins County's Environmental Mapper in Relation to Smith Wood and County Intermittent Stream

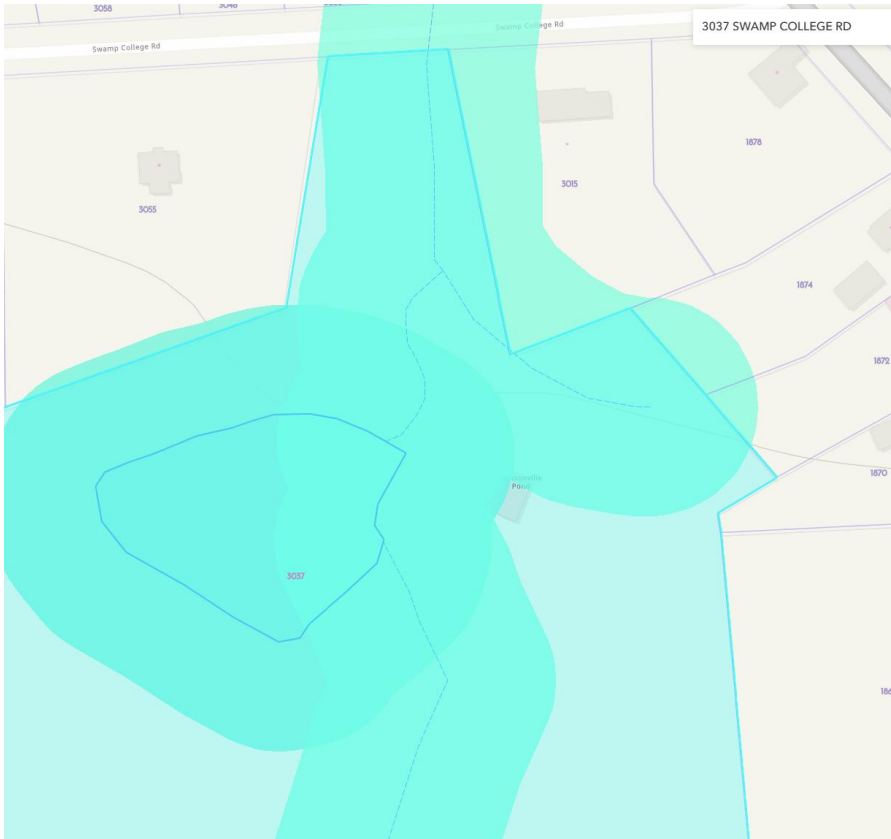


Image 2: Tompkins County's Environmental Mapper in Relation to JVP and County Intermittent Stream



Image 3: Tompkins County's Environmental Mapper in Relation to JVP and 100' Buffer from Wetland



Environmental Resource Mapper

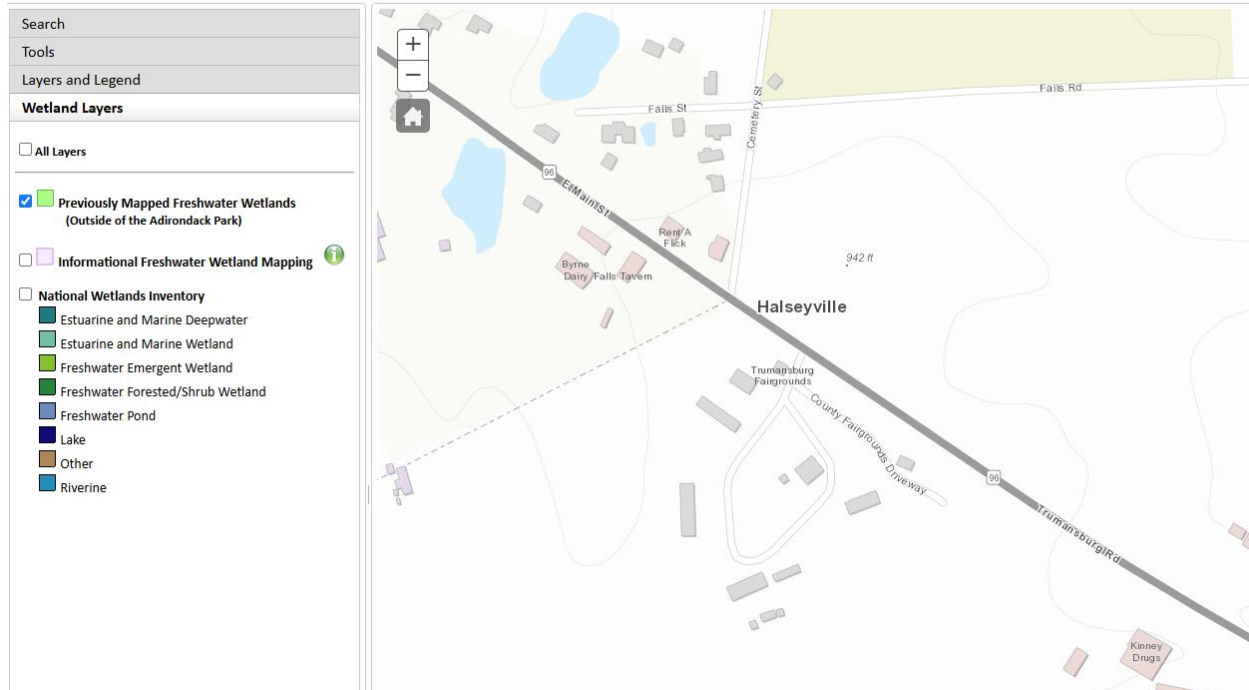


Image 4: DEC Wetland Mapper in Relation to Smith Woods and Previously Mapped DEC Wetlands