

Agenda Item: 11-33 **Request for Declaratory Ruling on the Application of Water Supply Watershed Protection Rules to a Proposed Development in the HQW Watershed of Mill Creek in the Town of Southern Pines**

Explanation:

On July 25, 2011, the Division of Water Quality received a copy of a Petition for Declaratory Ruling on issues related to the EMC's water supply watershed protection rules (WS Rules). The Petition was submitted by Esther W. Frye, a citizen of Moore County, and Moore County Wildlife and Conservation Club, Inc., and was filed in accordance with N.C. General Statutes § 150B-4 and 15A NCAC 2I .0600. The Petition asks that the EMC issue rulings on the application of 15A NCAC 2H .1006, 2B .0311(m) and 2B .0215, including the method and manner in which these rules should apply to a proposed development in the High Quality Water (HQW) watershed of Mill Creek in Southern Pines, N.C. Specifically, the Petition seeks rulings that would require application of the 5/70 provision to both the residential and non-residential portions of the proposed development under the WS Rules.

On August 1, 2002, Mill Creek and its tributaries, including McDeed's Creek, were reclassified from WS-III to WS-III-HQW [Stream Index No.s 18-23-11-(1-5)]. At the time of reclassification, a special designation was applied by the EMC to Mill Creek and its tributaries that allowed use of the 5/70 provision within the Mill Creek HQW watershed without requiring stormwater control per 15A NCAC 2H .1006 *Stormwater Requirements: High Quality Waters*. The 5/70 provision is a special high-density development provision that a local government may elect to include in its watershed protection ordinance. The 5/70 provision allows for a maximum of 5 percent of each jurisdiction's portion of a water supply watershed outside of the critical area to be developed with new development projects and expansions of existing development of up to 70 percent built-upon surface area.

The Division of Water Quality has prepared a response to the Petition, including recommended rulings for the EMC's consideration.

Recommendation:

Staff recommends that the EMC issue rulings that are consistent with the Division of Water Quality's existing interpretation of the regulations noted above.