The Department held a public comment period from May 23 to July 8, 2011. One public comment was received from Joe Poff, Citizen. The comment was forward to the City for response on July 8, 2011. The City's response below was received on August 9, 2011.

**Comment #1:** Letter expresses concern that as a long time property owner and commenter, “hoped to have input on this.”

City Response #1: Numerous opportunities were provided for public comment on the draft SMP over a more than two year period. These included extensive meetings with a Shoreline Citizen Advisory Committee (CAC) that were advertised and open to the public, Planning Commission meetings, City Council meetings and a Public Hearing, as well as the Department of Ecology comment period. SMP documents have been available on the City’s website and at City Hall during this process. The City formed the Shoreline CAC in 2008 with a representative who specifically lived nearby Mr. Poff along Jenkins Creek to represent those interests. The Shoreline CAC met 6 times over 14 months in public forums, advertised on the city website, and permitted public comments from those attending. The Shoreline CAC made a recommendation to City staff and the Planning Commission on proposed SMP policies and regulations. The Planning Commission held two public meetings on 4-2-09 and 4-16-09, one public hearing on 5-7-09, and one additional public meeting on 5-21-09, all advertised on the city website, with the public hearing noticed in the newspaper, and specific written postcard notice provided to all property owners within the proposed shoreline area to be affected. In addition the Covington Reporter published a specific news article on the topic of concern. Public testimony at the City Council meeting was provided by eight individuals, with additional citizenry in attendance. Adjustments were made in the final documents based upon some public testimony. The City Council then held a final public hearing on 6-23-09 before documents were forwarded to the Department of Ecology. The City Council then held one additional public hearing on final adoption of the Shoreline Master Program (SMP) on April 22, 2011, which was also advertised in the Covington Reporter and on the city website. A lengthy public process was used over three years with numerous public meetings and public hearings held with the Shoreline CAC, Planning Commission, and City Council, advertised by various methods, to ensure that the interested and affected public had ample notice to provide comments.

**Comment #2:** Letter expresses concerns about a perceived City plan to “take” private property. Comment refers to potential future impacts to property related to the future widening of Wax Road. Letter also mentions the perceived lack of certainty and transparency related to potential impacts to private property from future Wax Road expansion.

City Response #2: Future improvements to Wax Road are not part of the SMP Update proposal. The need for improvements to Wax Road are identified in the City’s Capital Improvement Plan, but final design, funding, timing, alignment and other details have not been determined and are at least 6 years in the future, dependent upon adequate funding. As that time approaches, specific written public notice will be provided to affected property owners along Wax Road. The City is committed to meeting all legal requirements related to private
property rights in its operations and capital improvements. The City has worked to achieve a balance between private property rights and the protection of the public interest.

**Comment #3:** Letter expresses concerns about a “100 or 300 foot buffer – I can’t recall” being purportedly proposed on Jenkins Creek in the past by a City Council member and the impact that buffer would have on their property.

City Response #3: Under the existing Critical Areas Regulations in Chapter 18.65 of the Covington Municipal Code, Jenkins Creek currently has a Critical Area Stream Buffer of 115 feet from the Ordinary High Water Mark (OHWM) or top of bank if OHWM cannot be determined. Critical area buffers also apply to associated wetland areas, which vary between 50 and 225 feet depending on the documented type of wetland. The proposed SMP would retain require a 115 foot buffer from the OHWM of Jenkins Creek and retain current requirements for critical areas along Jenkins Creek. Under state law, the Shoreline Master Program requirements apply to certain defined waters of the state and those areas within 200 feet of the OHWM, as well as associated wetlands and floodplains. This is referred to as the Shoreline Management Area. The Shoreline Management Area is not a buffer and development consistent with the SMP is allowed within that area, subject to the aforementioned 115 ft. buffer from Jenkins Creek and other critical area requirements.

**Comment #4:** Comment mentions a recent park closure.

City Response #4: The closure of Jenkins Creek Park several years ago around 2006 allowed the City to make certain improvements to remove and repair safety hazards for pedestrians and park users within this passive recreational area. The Jenkins Creek Park has since re-opened and is used by many citizens of the community. Future use and development of this park and adjacent proposed park corridors will depend upon funding. Issues relating to the management of this park are not directly related to the SMP, as the stream running through this park is outside the Shoreline Management Area.

**Comment #5:** Letter expresses concern about security and ecological damage of a potential trail along Jenkins Creek.

City Response #5: The SMP recognizes that there are important recreational improvements planned for the shoreline area adjacent to Jenkins Creek which have previously been identified in the City's Comprehensive Plan and Parks Plan. These include extension of the Jenkins Creek and 191st Place SE trails, and development of South Covington Park located directly adjacent to Jenkins Creek and accessible from SE Wax Road. The SMP also recognizes the need to protect high value habitat resources in this shoreline area, such as wetlands.

Under the State Shoreline Master Program Guidelines (WAC 127-26-221), public access standards in local SMPs should provide for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:
(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).

(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

The Covington SMP is consistent with these state requirements.

The SMP will ensure that any trail development does not negatively impact the ecological functions of the shoreline. Under the proposed SMP, trails shall be designed to avoid significant impacts to sensitive natural systems and shall result in no net loss of ecological functions. Trails shall be located at least 80 feet from the ordinary high water mark. In limited areas, trails may be closer to provide viewpoints or based on topography. Mitigation sequencing as described in Chapter 4, Environmental Impacts, Regulation 5, of the SMP shall be required. Whenever financially feasible and practical, the City shall require the use of building materials and technologies whose production and use result in reduced environmental impacts when developing public access to the shoreline. Porous pavements shall be used unless the applicant demonstrates to the satisfaction of the Shoreline Administrator that such materials would restrict accessibility, pose a safety hazard or are not sufficiently durable.

Comment #6: Letter expresses additional concerns about the future trail relating to potential City acquisition and compensation for loss of private property rights. The comment states: “I'm surprised they have the money to fight legal opposition to their plans which at some point is sure to come.” Comment speaks to the cumulative impact of various restrictions and proposed projects on private property rights.

Response #6: The City is very concerned about protecting private property rights, consistent with Washington state law and case law. The proposed Covington SMP has been developed consistent with state guidance related to shoreline public access and protection of private property rights. The City is committed to following the process outlined in the publication entitled, “State of Washington, Attorney General’s Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property” to avoid regulatory takings, including those that could result from the cumulative impacts of multiple projects.

Comment #7: Comment expresses concern that they don’t know the details of the proposed SMP update “because they (the City) tries to keep it all mysterious -usually refusing to post it on the web and make someone go into City Hall to see it”.

Response #7: Please see response to Question #1. In addition, since 2008, the City has maintained a Shoreline Master Program webpage on its website, where the process and progress of the 3 year long SMP development has been identified, including methods to participate, specific dates of public meetings and public hearings, and individuals to contact with questions and concerns. That webpage has been updated at least twice during the 3 year
planning process to reflect the current status of the SMP Update program. Please see

The Department of Ecology concurs with all of the City’s responses to Mr. Poff’s comments.