

**Bourne Conservation Commission
Meeting Minutes 2.16.2023**

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TOWN CLERK BOURNE

Chm. Robert Gray called to order the meeting of the Conservation Commission at 6:30 p.m. conducted in person and via remote access on Thursday, February 16, 2023, held in the Bourne Veterans Community Building, 239 Main Street Buzzards Bay, MA 02532. Chm. Gray explained all reviews, unless otherwise stated, are joint reviews. Applications will be processed pursuant to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131 Section 40 and pursuant to Article 3.7 of the Town of Bourne Wetlands Protection Bylaw.

Chm. Gray asked if a member of the public wishes to comment they will first clearly state their full name for the record. Chm. Gray asked if anyone was recording at this time, other than the Conservation Department.

Commission members present: Chm. Gray, Greg Berman, Melvin Peter Holmes, Paul Szwed and Rob Palumbo.

Excused members: Tom Ligor and Susan Weston

Professional staff in attendance: Stephanie Fitch, Wayne Tavares, David MacLean, Tom Lee, Peter Valeri, Michael Pimentel, Brad Bertolo, Jamie Bissonette, Mark Dibb and Don Monroe.

Present by remote access: Paul Szwed and Mark Dibb

Continuances

83 Elgin Road, Pocasset continued to 3/02/2023

96 Megansett Road, Cataumet continued to 3/16/2023

DEP File No. SE7-2226

DEP File No. SE7-2172

Request for Determination:

1. **140 Wings Neck Road, Pocasset Peter O'Hanian c/o Earl Lantery P.E. File Number: CC22-40 Proposed Project:** Replacement of a cesspool with a Singulair Bio-Kinetic Mono Tank w/ extended base. This project is located in a V flood zone. **Continued form 1/05/2023.**

Earl Lantery P.E. represented on behalf of the applicant. The plans were revised to include a denitrification system per the Health Agent's comments. Mr. Lantery designed the leach field at the highest location on the lot to get as much separation from ground water as possible and with little or no trees involved. He staked out the property in the middle where there are two small Holly trees to be removed or replaced, a couple of Pitch Pines and a dead Oak tree.

Agent comment: Ms. Fitch said the new system will be located in the velocity zone only with the exception of the pump chamber which is about 67 ft. from the seawall. Removing the cesspool is an improvement over the existing conditions. Ms. Fitch noticed there were no erosion controls shown on the site plan but from her site visit the lot is flat and level up until the seawall and is far enough away which she didn't believe to be a concern.

Member comment: The Commission members discussed and the components looked to be below grade and had no other concerns. No public comment.

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Motion made by Mr. Holmes and seconded by Mr. Palumbo for a Negative Two Determination. Roll Call: Mr. Berman- yes, Mr. Szwed-yes, Mr. Palumbo- yes, Mr. Holmes-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

2. **44 Baxendale Road, Cataumet Clayton Jones c/o David MacLean, Architect & Tom Lee, Landscape Architect File Number: CC23-3 Proposed Project:** Proposed removal of invasive species landward of the coastal bank and replacement with native species along the north façade of the existing residence. This project is located within 100 ft. of a wetland resource area. **Continued from 2/02/2023.**

David MacLean AR and Tom Lee PLA represented on behalf of the applicant. The proposed work area is identified on the plan and is landward of the coastal bank on a northerly slope of the property. The hatch area represents selective removal of invasive species and replacing the voids with native species. The other planting area size is 2,350 SF of new proposed planting which is shown on the planting schedule. The invasive species will be removed mechanically and any exposed area will be provided with a silt fence for erosion control. The hatched area is approximately 1,000 SF and anything outside of that area is only removal of invasive vines that would potentially kill the trees.

Agent comment: Ms. Fitch was pleased with the erosion control plan and asked Mr. Lee what the process would be with the mini excavator. Mr. Lee explained that ideally all the work will be done at once and requested approval in perpetuity to manage the vines of the invasive species. The mini excavator will be brought in from the side of the yard and used close to the house to remove the roots of most invasive species to keep them from sprouting back.

Agent comment: Ms. Fitch recommended the following conditions:

- TL Studio Landscape Architecture or other contractor will provide a report on the health of the new plantings to the Conservation Agent annually for two years.
- Erosion controls must be set up on site and maintained throughout the project.
- If herbicide is to be used, a plan must be reviewed with the Conservation Agent prior to its use and it must be applied by a licensed Massachusetts Herbicide Applicator.
- The invasive vine management as outlined in this request is granted in perpetuity.

Member comment: The Commission had no further questions. No public comment.

Motion made by Mr. Holmes and seconded by Mr. Palumbo for a Negative Two Determination with conditions. Roll Call: Mr. Berman- yes, Mr. Szwed-yes, Mr. Palumbo-yes, Mr. Holmes-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

3. **11 Cleveland Circle, Gray Gables Lynn Campana c/o Peter Valeri File Number: CC23-5 Proposed Project:** Proposed new Title 5 septic system upgrade with denitrification. This project is located in an AE flood zone.

The contractor Peter Valeri represented on behalf of the applicant. The homeowner decided to upgrade to an I/A septic system which is designed to prevent excess nutrients from entering estuaries and freshwater ponds to get ahead of the new State regulations affecting Cape Cod. There is a crumbling wood retaining wall in the back that will be rebuilt with blocks and the grade will stay the same. They are going to remove and replace a set of stairs

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located on the side of the existing house to access the back yard. The project area will be loamed and seeded when complete.

Agent comment: The project is located in the ACEC and Ms. Fitch was glad to see the I/A system upgrade.

Member comment: The Commission had no further comments. No public comment.

Motion made by Mr. Holmes and seconded by Mr. Palumbo for a Negative Two Determination. Roll Call: Mr. Berman- yes, Mr. Szwed-yes, Mr. Palumbo- yes, Mr. Holmes-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

4. **73 Puritan Road, Buzzard Bay Suzanne E. Flynn c/o JC Engineering, Inc. File Number: CC23-4 Proposed Project:** Proposed replacement of an existing deck with a new 12' x 20' deck and the replacement of an existing 4' x 5.5' front stoop with a new front stoop within same footprint. This project is located within 100 ft. of a wetland resource area.

Michael Pimentel PE from JC Engineering, Inc. represented on behalf of the applicant via Zoom. The proposed project is to replace a deck and stoop within 100 ft. of a coastal bank and within 100 ft. of salt marsh. The front 4x5.5' stoop will be replaced exactly in kind and the deck in the back will be replaced but it is proposed larger. They have proposed the deck to be pulled back over sonotubes and cantilevered 2 ft. beyond with the closest point being 21.6 ft. from the coastal bank vs. the sonotube section being 23.6 ft. They are closer to the coastal bank but it is the cantilevered section only. There will be a row of straw waddles on the slope of the coastal bank for erosion control. No grade changes were proposed and no natural vegetation removal.

Agent comment: Ms. Fitch shared photos of the site and showed how the yard is slightly sloped towards the coastal bank. Ms. Fitch recommended a condition requiring planting of several ft. of buffer plants to protect against any runoff to the bank. There are a lot of invasive vines and she encouraged promoting stability of the bank. She had no further issues with erosion in regards to the cantilevering.

The following conditions discussed with the Commission:

- A 3'-4' vegetative strip of native plants directly landward of the top of coastal bank must be maintained in perpetuity. A plan or proof of planting is required to be submitted to the Conservation Department prior to Conservation sign-off on the building permit.
- No mowing, removal of vegetation from the coastal bank or vista pruning on the coastal bank is granted under this Determination.

No public comment.

Motion made by Mr. Holmes and seconded by Mr. Palumbo for a Negative Two Determination with conditions. Roll Call: Mr. Berman- yes, Mr. Szwed-yes, Mr. Palumbo-yes, Mr. Holmes-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

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Notice of Intent:

1. **28 Wall Street, Buzzards Bay Robert & Arlene Cardoza c/o JC Engineering, Inc. DEP File Number: SE7-2231 Proposed Project:** Proposed septic system upgrade within 100 ft. of a wetland resource area. Brad Bertolo PE from JC Engineering, Inc. represented on behalf of the applicant. This is a single family dwelling with two (2) cesspools. There is one cesspool in the front that handles the majority of the flow and the one in the back services a basement bathroom. This property is adjacent to Queen Sewell Pond and a portion of the property is in a flood Zone. Per DEP Policy 92-1, a coastal bank is located at the grass line in the back yard. The cesspool currently at the top of bank covers the basement bath. To accommodate the area they proposed to install a pump system south of the existing deck that will connect to the main system. A line will run around to the new system which will contain a 1,500 gal tank and I/A septic technology. The new leaching system will be located in the front yard pushed as far forward as possible to maintain property setbacks. All work will take place in the grassed area and visibly staked out. Erosion control barrier will be located to the southwest of the property and all disturbed areas will be loamed and seeded. A mini excavator has access by the side of the house and a plastic tank was chosen over concrete so that it may be carried by hand over using larger machinery. The cesspool will be pumped and filled in.

Agent comment: Comments from DEP- The project must meet the performance standards for coastal bank. 310 CMR 10.30 (6). Ms. Fitch was satisfied with the erosion controls and happy to see an upgrade to the Title 5 system next to an impaired water body. There is a unique situation here inland/food zone that interacts with the bank, so there is a coastal bank along the entire shore of Queen Sewell pond.

Member comment: The Commission had no further questions. No public comment.

Motion made Mr. Holmes and seconded by Mr. Palumbo to close the public hearing.
Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes and Chm. Gray-yes.

The draft Order: *All general conditions and special conditions pursuant to the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40 include: 1, 2, 3, 5, 7, 10, 12, 14, 18, 21, 27 & 28. Special conditions pursuant to the bylaw include: 5, 6, 7 & 9.*

Motion made by Mr. Holmes and seconded by Mr. Palumbo to move draft into the final and issue the Order. Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

2. **122 Wings Neck Road, Pocasset Mary Vendice c/o Zenith Consulting Engineers, LLC DEP File Number: SE7-2227 Proposed Project:** The installation of a new pier, ramp and float. The pier is to be constructed out of lumber and flow thru decking within the V flood zone and within wetland resource areas. **Continued from 2/02/23.**

Jamie Bissonette PE from Zenith Consulting Engineers represented on behalf of the applicant. On the initial site visit with Ms. Fitch there was a salt marsh that was missed. They

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continued the hearing until Brad Holmes PWS from ECR was able to get back to the site and update the plan. They've proposed an elevated walkway by mean high water over the salt marsh to protect vegetation and then to the ocean. The beach is extremely rocky and they proposed to carry the permanent structure to mean low water and start the removable pier section from that point down. This will protect the salt marsh and help avoid having to work with the rocky soil which is about 20 ft. beyond the edge of salt marsh. Brad Holmes conducted a shellfish and eelgrass survey and this is a designated shellfish area (Quahog). At the four corners they have added float stops to maintain 30" water depth, one corner was just shy of the 30" requirement. They provide public access and the best place is just south of the coastal bank in a small area on the beach where they can provide steps to traverse over the permanent elevated walkway.

Agent comment: Ms. Fitch would like to see the label on the site plan for the delineated seaward edge of the salt marsh. Also they are still waiting for the DMF letter. Once the plans are revised Ms. Fitch will send the updated plan to the cove master. They are working on the ratio to space apart the flow through decking requirement which is 65% over the salt marsh. Brad Holmes flagged an area of salt marsh that is being mowed so there will be a cease and desist on that. They will need to provide a permanent marker/ post and rail fence of some sort as part of a condition and stop mowing in that area. Ms. Fitch addressed the impact of the landward approach to the dock over a coastal dune. Chm. Gray explained that one area to direct foot traffic is better and in other towns they have a wooden roll up/ dune mat for non-elevated walkways which is only used in the summer season and then taken away. Ms. Fitch said in terms of off-season storage the Commission needs to discuss the conditions. The Commission previously discussed that all floats should be stored out of all resource areas, including flood zones, but she is worried that will become an undue hardship in some cases and it is hard to regulate. She noted she was ok with permission in flood zone areas and in this case they have moved the storage area to a brick patio space. Ms. Fitch does not want to see storage on salt marsh or coastal dunes. Ms. Fitch would rather focus on float storage off salt marshes vs. flood zones. In some cases permission was granted for storage on salt marsh in the winter when the grass is dormant and conditioned into an Order, but Ms. Fitch questions if a seasonal homeowner will be back in time to ensure the float is taken off the salt marsh in the spring. Chm. Gray asked about the shellfish report and Ms. Fitch said after the Order is issued they will work with DNR for mitigation. The shellfish mitigation fund is still with the state legislature. Ms. Fitch has also done a site visit with Natural Resource officer Todd Bailey and he had no navigation or other concerns at this time.

Member comment: Mr. Berman ensured signage would be posted on the steps per Chapter 91 requirements and Mr. Szwed clarified with Mr. Bissonette that the passage is located out of the salt marsh. The Commission members discussed the permanent structure on the salt marsh and requested that Brad Holmes establish the seaward edge of the marsh and mark it on the site plan. The updated plan will label the delineation, and should have a permanent markers in the area of unpermitted mowing. Mr. Berman also recommended storage anchoring in flood zones to eliminate flood born debris.

No public comment. **Continued at the request of the applicant to March 2nd.**

3. **490 Scraggy Neck Road, Cataumet William Murphy, NW Holdings, LLC c/o Cape & Islands Engineering, Inc. DEP File Number: SE7-2230 Proposed Project:** The

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installation of a proposed seasonal ramp and bottom-anchored float. The work will take place within a V flood zone and wetland resource areas. **Continued from 2/02/2023.**

Mark Dibb PE from Cape & Islands Engineering, Inc. represented on behalf of the applicant. They received an update from DMF with no further recommendations. Regarding the eel grass sprig findings and the Army Corp. of Engineers definition, Brad Holmes could resume study in the summer. Brad Holmes was not 100% sure last summer's report met the new definition and it would take scuba divers to make that determination. Mr. Dibb said no further plan revisions were made and opened it up to the Commission for discussion to decide how they would like to handle the condition or how they would like to move the project forward.

Agent comment: Ms. Fitch said DMF had no recommendations for sequence of work. She spoke with Brad Holmes at length about the surveying. Brad Holmes surveys by kayak and camera. The Washington DNR and Army Corp of Engineer's requirement to count per square meter makes scuba diving more reliable over camera/kayak, but there are not many in the area who do scuba. Ms. Fitch researched the possibility of a post construction survey. She wanted to narrow down the actual month of the eelgrass growing season which would be helpful to find out the dormant months when conditioning the Order for a time of year restriction when the helical piles go in. Ms. Fitch is going to reach out to DEP and Joe Costa, director of the Buzzards Bay National Estuary Program, regarding the survey.

No public Comment. **Continuance requested to the next hearing on March 2nd 2023, pending additional information.**

4. **134 Wings Neck Road, Pocasset Richard W. Selby c/o Coastal Engineering Co., Inc.**
DEP File Number: SE7-2217 Proposed Project: Dune restoration and beach nourishment. Located within a V flood zone and wetland resource areas. **Continued from 2/02/2023.**

Don Monroe from Coastal Engineering Co. Inc. represented on behalf of the applicant. In September of 2022 they submitted a dune restoration and beach nourishment project. An issue came up regarding whether the dune was actually a dune because of the salt marsh vegetation behind and on the dune itself, the landward and seaward side. Ms. Fitch arranged an onsite meeting with Rebecca Haney of CZM and circuit rider Andrew Poyant of DEP. Don Monroe and Chm. Gray also attended the onsite meeting with Ms. Fitch. Ms. Haney and Mr. Poyant did a few boring tests on the dune and found saline sediment down below. Mr. Monroe looked into old court cases where there is a unique situation of back salt marsh on a coastal dune. This is all related to the high tide line (HTL) and in order for it to be a dune the HTL cannot over top the actual dune. If it does over top the actual dune it would be a salt marsh, even though it is the shape of a dune. If the HTL intersects on the seaward side and the lower crest of the landward side, then it is classified as a dune. To determine the delineation, they would need to show CZM the equipment used and find an efficient NOAA tide station bench mark. A professional land surveyor provided that survey and property lines using an EDM machine. They transferred elevations to the side and crest of dune to what CZM was asking for. They determined it to be an existing dune. The reason they continued to a date certain was because the previous Order had to expire first because the previous delineations were still in effect of that Order. The new delineations are now able to be presented. The Barnstable Estuary Program provided HTL's and published a formula and

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using that formula, Mr. Monroe is very confident they are working with a dune. Chm. Gray asked if the report was sent to CZM and DEP. Ms. Fitch said she will forward the new information and methodology to them for review. Sediment sampling was requested and the proposed dune would be revegetated to current conditions using North American Beach grass. It is important to revegetate using a dense beach grass over the top of the dune in the case of a major storm event to prevent washout back into the salt marsh. The restoration would need to file with the Army Corp. because they are below the HTL. There is a current Enforcement Order on the path bringing it back to 4 ft. wide. The proposed equipment would use large rubber tire wheelbarrows that would fit the path. A roll out wooden mat would be used over the dune and would not cause depression. The Enforcement Order cited widening of the path and believed to have a higher elevation, Mr. Monroe said no fill was brought in but believed elevation changed because of the compression of mowing.

Agent comment: Ms. Fitch's next step is to reach out to CZM and DEP.

Member comment: Mr. Berman confirmed the formula of the dune slope with the Buzzards Bay Estuary as a 3:1 slope. He said timing is key for the American Beach grass to be rooted to the previous material.

No public comment. **Continuance requested to March 2nd.**

Request to Extend Order of Conditions:

1. **Off Seal Lane, Cataumet Scraggy Neck Recreation Association c/o Paul Gaffney, Treasurer DEP File Number: SE7-1491 Proposed Project:** Beach nourishment to continue to permit the addition of up to 200 cubic yards of sand per year. SNRA requested an extension of three years from the existing Order of Conditions Extension permit expiring on 3/04/2023.

Paul Gaffney, Treasurer of SNRA presented on behalf of the 3 year Extension Request. The original Notice of Intent was filed back in 2004. The project is for beach nourishment above High Mean Water. The two main purposes of the request: 1) The beach becomes rocky from western exposure and 2) To keep the beach useful and the landward dune barrier healthy.

Agent comment: Ms. Fitch made a site visit and agreed that they are continuing to lose sand and recommended the Extension. She has not heard of any complaints regarding the nourishment. The ongoing project uses a very limited amount of sand. She said in 2016 they amended the Order from 500 cubic yards to 200 cubic yards of sand per year. Since then, the permit was renewed twice. The sand used will be compatible with the natural occurring sand on-site, and access will be consistent with the original permit.

Motion made by Mr. Holmes and seconded by Mr. Palumbo to issue the Extension Request. Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

Request for Certificate of Compliance:

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1. **4 Windmill Road, Bourne Ronald & Marsha Wagner c/o JC Engineering, Inc. DEP File Number: SE7-1907 Proposed Project:** Certificate of Compliance requested for Order of Conditions issued on 10/03/2014. Proposed addition to an existing single family dwelling; construction of an in-ground pool with concrete pad, shed and fence enclosure; construction of two walkways; and the installation of a new septic system located within 100' of a wetland resource area.

Agent comment: Ms. Fitch recommended issuance of the COC for the addition and pool work. Yet, during her site visit she noticed that they are storing several floats and the ramp on the coastal beach in the off season.

The Agent and Commission discussed the permit and licensing for the dock at 4 Windmill Road. The dock does have a Chapter 91 License but it is unclear when it was permitted. Further research needs to be done.

Motion made by Mr. Holmes and seconded by Mr. Palumbo to issue the COC for SE7-1907. Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

Discussion/Business

1. Discussion and possible vote on the language for an amendment to the Town of Bourne Wetland Protection Bylaw Article 3.7, Wetland and Natural Resources Protection, Section 3.7.3: Notice of Hearings.

Request to add "certificates of mailing" to the language which would make the bylaw match with the wetlands protection act. "The applicant shall provide written notification to all Abutters required to be notified by hand delivery or certified mail, return receipt requested, or by certificates of mailing."

Motion made to amend bylaw section 3.7.3 to include language "certificates of mailing" and seconded. Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, Mr. Palumbo-yes and Chm. Gray-yes. **Motion carried. 5-0-0.**

2. Discussion and possible vote on the language for an additional section to the Town of Bourne Wetland Protection Bylaw Article 3.7, Wetland and Natural Resources Protection, Section 3.7.13: Waiver.

The Commission discussed ideas of adding a Waiver and what actions would go along with evaluating that determination. To apply for and obtain a Waiver will be spelled out in the Bourne Wetland Regulation in more detail. Mr. Szwed and Mr. Palumbo are going to work on the language and come back to the next meeting. Ms. Fitch is going reach out to Town Counsel on procedures. **Continued to March 2nd.**

3. Discussion and possible vote on the language for an amendment to the Town of Bourne Wetland Protection Bylaw Article 3.7, Wetland and Natural Resources Protection, Section 3.7.4: Definitions; Regulations (Adjoining Land Areas)

The Commission discussed the definition and language of the 50' setback for undeveloped lots, eroding Coastal Banks and non-eroding Coastal Banks. **The Commission continued to March 2nd to finish the edits to the Bylaw draft.**

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Mr. Palumbo excused himself from the meeting at 9:20 P.M.

4. Discussion and possible vote to waive bylaw fees for DMF's ILF Eelgrass Restoration Project.

DMF has requested a waiver from the bylaw fee for the eelgrass transplant project for habitat restoration in 2 locations within the subtidal area of Buzzards Bay. The bylaw fee form states: Fees may be waived at the discretion of the Conservation Commission for non-profit or educational organizations or for those projects considered by the Commission to be an environmental improvement project. Extenuating circumstances or hardship the applicant may be experiencing may also be considered for reason to waive the filing fee.

Motion made by Mr. Holmes and seconded by Mr. Berman to grant the waiver.
Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, and Chm. Gray-yes.
Motion carried. 4-0-0.

5. Approve minutes of 1/19/23.

Motion made by Mr. Berman and seconded by Mr. Holmes to grant the waiver.
Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, and Chm. Gray-yes.
Motion carried. 4-0-0.

6. Vote to excuse absent members.

Motion made by Mr. Berman and seconded by Mr. Holmes to grant the waiver.
Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, and Chm. Gray-yes.
Motion carried. 4-0-0.

7. **Motion made to adjourned.**

Roll call: Mr. Holmes- yes, Mr. Berman-yes, Mr. Szwed-yes, and Chm. Gray-yes.
Motion carried. 4-0-0.

Meeting adjourned 9:38 P.M.

Meeting recorded and minutes edited by: Stephanie Fitch- Conservation Agent
Minutes typed by: Amalia Amado- Conservation Secretary II