

RESOLUTION NO. 08-277

**A RESOLUTION EXPRESSING CONCERNS AND OBJECTIONS TO THE
PROPOSED ACTION BY CANADIAN NATIONAL RAILWAY COMPANY TO
ACQUIRE THE ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

WHEREAS, the Illinois Downstate Forest Preserve District Act, 70 ILCS 805/0.001 *et seq.* (West 2006), empowers the Forest Preserve District of DuPage County ("DISTRICT") to "acquire...and hold lands... for the purpose of protecting and preserving the flora, fauna, and scenic beauties...and to restore, restock, protect, and preserve...such lands together with their flora and fauna, as nearly as may be, in their natural state and condition, for the purpose of education, pleasure, and recreation of the public" 70 ILCS 805/5 ; and

WHEREAS, on October 30, 2007, the Canadian National Railway Company, along with its U.S. subsidiary Grand Trunk Corporation (collectively "CN"), filed an application with the federal Surface Transportation Board ("STB") seeking approval to acquire the Elgin, Joliet, and Eastern West Company, a wholly owned non-carrier subsidiary of the Elgin, Joliet, and Eastern Railway Company (collectively, "EJ&E"); and

WHEREAS, the DISTRICT owns, operates and manages certain property commonly known as the Pratt's Wayne Woods Forest Preserve, West Chicago Prairie Forest Preserve / Truitt – Hoff Nature Preserve, Roy C. Blackwell Forest Preserve and Night Heron Marsh Forest Preserve where the EJ&E rail line bisects, adjoins, or lies adjacent to portions of these four forest preserves; and

WHEREAS, the STB, Section of Environmental Analysis ("SEA"), is charged with the responsibility for conducting an assessment of the proposed action for potential adverse environmental impacts within potentially affected environments and developing an Environmental Impact Statement ("EIS") for use and evaluation by the STB in considering the CN application; and

WHEREAS, within the proposed action, CN proposed to construct a rail connection called the "Munger Connection," which planned to extend from the EJ&E line and connect rail service to an existing rail line owned by CN and that this proposed connection would require DISTRICT land within Pratt's Wayne Forest Preserve and would have a direct construction footprint on a wetland within that preserve and would clearly result in a loss of preserve land, a loss of valuable habitat, and a resultant impact to wildlife species; and

WHEREAS, the DISTRICT sent letters to CN and filed these letters with the STB from both the DISTRICT'S legal counsel and President Pierotti of the Board of Commissioners on February 8, 2008 and March 5, 2008, respectively, generally stating that: (a) The DISTRICT does not have the statutory authority under Illinois law to voluntarily sell or otherwise convey its property to the CN; (b) CN has no eminent domain authority to acquire the DISTRICT'S property; (c) Section 5e of the Downstate Forest Preserve District Act, 70 ILCS 805/5e (West 2006), specifically provides that forest preserve district property "shall not be subject to eminent domain or condemnation proceedings..."; (d) There is nothing in Illinois law that permits the Illinois Commerce Commission to authorize Canadian National to take public property through eminent domain; and (e) The DISTRICT is not aware of any Federal law authorizing an involuntary taking, and accordingly, the DISTRICT does not believe that CN can acquire the property identified in the proposed action or alternatives involving any land within the Pratt's Wayne Forest Preserve; and

WHEREAS, the DISTRICT submitted on February 14, 2008, to STB/SEA comments and concerns regarding the scope of the EIS and has further cooperated in providing on April 29, 2008, to SEA through HDR Engineering, a third party contractor assisting SEA, applicable preserve data, analysis and relevant reports and studies in order to properly assess potential adverse effects to DISTRICT preserves; and

WHEREAS, on July 25, 2008, the STB/SEA published the, "Draft Environmental Impact Statement for the Canadian National Railway Company Acquisition of the Elgin, Joliet & Eastern Railway Company, Finance Docket No. 35087"; and

WHEREAS, the STB/SEA are accepting public comments concerning the DEIS until September 30, 2008; and

WHEREAS, the DEIS "describes the affected environment, evaluates and compares the direct, indirect, and cumulative environmental effects of the proposed action and alternatives, and identifies mitigation measures that could eliminate or lessen the expected environmental impacts"; and

WHEREAS, the DEIS contains findings and assessments of adverse environmental impacts to DISTRICT preserves that include, but are not limited to: (a) a significant increase in the frequency of trains per day; (b) a significant increase in the total number of rail cars and subsequent freight tonnage per day; (c) a significant increase in quantity and frequency of hazardous materials being transported; (d) an increase in frequency of noise and vibration stemming from projected rail traffic; (e) an increase in localized air pollutants stemming from projected rail traffic; (f) potential adverse impacts to various biological resources inclusive of protected state listed species; (g) potential adverse impacts to water resources; (h) potential cumulative adverse affects to some preserve locations; and (i) potential adverse impacts to trail and preserve public users; and

WHEREAS, the DISTRICT has reviewed the DEIS voluntary mitigation measures proposed by CN and/or recommended mitigation measures by SEA proposed to eliminate, off set, and/or lessen these potential adverse environmental impacts to the affected preserves and finds them generally inadequate to satisfactorily address the aforementioned potential adverse impacts to DISTRICT preserve resources and the visiting public; and

WHEREAS, the Board of Commissioners finds that it is reasonable, necessary and in the best interest of the DISTRICT to express its concerns and objections to the proposed action by CN.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Forest Preserve District of DuPage County as follows:

1. The recitals set forth above are incorporated herein and made a part hereof.
2. The Board of Commissioners hereby finds that the DEIS: (a) does not address all potential adverse environmental impacts to District preserves, resources and/or public users; (b) does not assess all preserve areas deemed by the District to be potentially affected environments; (c) does not address all potentially adverse direct, indirect, and cumulative environmental impacts within those potentially affected environments; and (d) does not address complete and adequate voluntary and/or proposed mitigation measures to make the DISTRICT whole.
3. The Board of Commissioners finds that the DEIS leaves the DISTRICT with significant concerns regarding the potential adverse impacts and proposed mitigation measures and hereby registers an objection to the proposed acquisition of the EJ&E by CN.
4. The Board of Commissioners directs DISTRICT staff to express these concerns and to discuss these outstanding issues at the STB/SEA Illinois Natural Resources and Water Resource stakeholder meeting to be held on September 2, 2008.
5. The Board of Commissioners further directs DISTRICT staff to discuss and share with representatives of CN the concerns of the DISTRICT regarding potential adverse environmental impacts and to explore mitigation strategies with CN that can be incorporated as "Environmental Conditions" into the Final Decision by the STB.

6. The Board of Commissioners further directs DISTRICT staff to develop and submit written comments in review of the DEIS and to submit the review comments to the STB/SEA prior to September 30, 2008.

7. The Secretary is hereby directed to transmit certified copies of this Resolution to the Executive Director, Deputy Director Bureau of Natural Resources, Director of Natural Resources, Director of Finance, and Attorney for the DISTRICT, and to transmit a certified copy to the Surface Transportation Board, Chief of Section of Environmental Analysis, 395 E Street SW, Room 1106, Washington, D.C. 20423 for filing as part of the record.

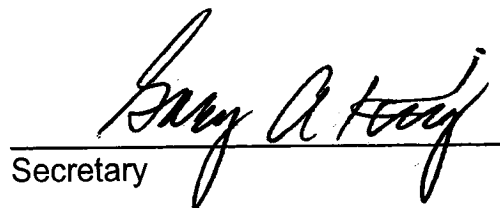
PASSED AND APPROVED by the President and Board of Commissioners of the Forest Preserve District of DuPage County this 2nd day of September, 2008.

APPROVED:



President

ATTEST:



Secretary

Ayes: 7

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

I, GARY A. KING, SECRETARY OF THE FOREST PRESERVE
COMMISSION IN THE COUNTY AND STATE AFORESAID, AND
KEEPER OF THE RECORDS AND FILES THEREOF, DO HEREBY
CERTIFY THE FOREGOING TO BE A TRUE AND CORRECT COPY OF

A RESOLUTION

PASSED BY THE BOARD OF COMMISSIONERS AT A MEETING
HELD AT THE DISTRICT HEADQUARTERS, 3 SOUTH 580
NAPERVILLE ROAD, WHEATON, ILLINOIS, ON THE 2ND DAY
OF SEPTEMBER, A.D., 20 08.

GIVEN UNDER MY HAND AND THE OFFICIAL SEAL AT
WHEATON, ILLINOIS, THIS 3RD DAY OF SEPTEMBER,
A.D., 20 08.

Surface Transportation Board

CN-EJ&E EIS - FD-35087

Log and Distribution

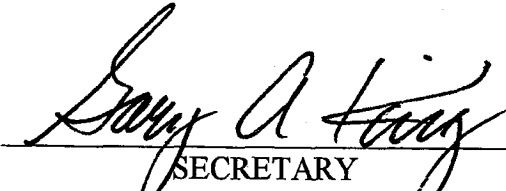
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SECRETARY
FOREST PRESERVE COMMISSION
DU PAGE COUNTY, ILLINOIS