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March 4, 2025

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Senator Tim Nangle, Senate Chair  
Representative Lydia Crafts, House Chair  
Joint Standing Committee on Transportation  
c/o Legislative Information Office  
100 State House Station  
Augusta, ME 04333

Re: Opposition of TrainRiders Northeast to Passage of LD 29, Resolve, to Require the Department of Transportation to Implement the Recommendations of the Lower Road Rail Use Advisory Council

Dear Senator Nangle and Representative Crafts:

I am the President of TrainRiders Northeast. TrainRiders is the grass roots citizens' organization that was the driving force behind the initiation of the Downeaster passenger rail service between Brunswick and Boston and which continues to strongly support that service to this day. It also supports improvements and expansion of passenger rail service in Maine and throughout the Northeast, where such expansion is rationally justifiable given current and potential economic and social conditions. I myself acted as the pro bono attorney for TrainRiders from 1989-2022, when I became president. I also was a member of the inaugural board of directors of the Northern New England Passenger Rail Authority ("NNEPRA"). I was a member of the Rail Use Advisory Council ("RUAC") formed to study the Lower Road and authored the minority report for that RUAC.

TrainRiders Northeast strongly and absolutely opposes the passage of either of LD 29. That bill seeks the removal of track and other rail infrastructure along that part of the Lower Road rail line between Brunswick and Augusta that is now owned by the State of Maine, with that infrastructure to be replaced with a trail. TrainRiders' opposition is as follows:

1. In 1989, the Maine Legislature enacted the State Railroad Preservation Act in which they found that "a viable and efficient rail transportation system is necessary to the economic well-being of the State" and that the State of Maine "must take active steps to protect and promote rail transportation to further the general welfare." 23 M.R.S. § 7102. Subsequent legislative support for these findings have

proven their truth as shown, for example, by the vast success of the Downeaster service on the passenger side and the continuing survival of and need for the freight rail service provided by Eastern Maine Railway in northern Maine.

2. The State Railroad Preservation Act also provides that any track removal from a State-owned rail line must ensure “that the rail corridor will be preserved for future rail use.” 23 M.R.S. § 7107. Another statute also requires that all State-owned rail corridors “be preserved for future rail use”. 23 M.R.S. § 75(1).
3. LD 29 and other bills already filed in the current legislative session will test whether the Maine legislature retains what was formerly a steadfast commitment to both passenger and freight rail in this State. If this legislature turns its back on that commitment, it will permanently destroy a vital tool for economic development, environmental progress, and travel choices for all Maine residents and visitors.
4. In 2021, the Maine Legislature passed what became 23 M.R.S. § 75, providing for the creation by the Commissioner of Transportation of a rail use advisory council (a “RUAC”) upon the petition of one or more governmental entities along a State-owned rail corridor. Each RUAC is to make recommendations regarding the potential uses of the corridor, including, but not limited to, rail use, trail use, or bikeways. Each RUAC is also required to submit a report to the Commissioner on its findings and recommendations regarding the use of that corridor within nine months of the convening of its first meeting. If that report includes a recommendation of track removal or nonrail use of the corridor and the Commissioner concurs with that recommendation, then the Commissioner is required to submit legislation to be evaluated by this Committee prior to track removal or other change in use of the line for nonrail purposes. **Any legislation approving such a recommendation must provide that any track removal or other change to nonrail use must be “interim in nature, “and that the rail corridor will be “preserved for future rail use” even after that removal of rail or change in use, and this must be stated in the legislation approving the same. 23 M.R.S. §§ 75(1), 7107.**
5. In August 2023, 11 Lower Road RUAC members voted to recommend removing the rail on the State-owned portion of the Lower Road rail line between Brunswick and Augusta and replacing it with a trail. That majority also indicated that the Commissioner might want to consider retaining the rail on the first mile of that line since it was then leased to a third-party operator. The remaining 3 members of the RUAC voted to recommend that a trail be constructed beside the existing rail. The majority and the minority each issued a report supporting their respective recommendations (copies attached).
6. More than a year after the RUAC issued its recommendation, MDOT submitted LD 29 seeking authorization to remove the tracks from the Lower Road between Brunswick and Gardiner and replace them with a trail, while leaving the rail intact between Gardiner and Augusta since there was already a trail alongside that existing track.

7. As a technical matter, although the introductory “Whereas” clauses in LD 29 indicate that the partial conversion of the Lower Road to a trail would be an “interim nonrail use” and that the line would be preserved for future rail use, the body of the actual resolutions in those bills do not include the required statutory language. Thus, the operative portion of these resolutions is statutorily deficient.
8. **Importantly, the cost of reinstalling rail after it has been ripped up is much higher than improving a rail line, even when the rail line is in terrible condition. For many years, federal law has provided a mechanism for rail banking in which rail, ballast, and other infrastructure are removed from a rail line and replaced by a trail, with the same legal requirement that it be held in readiness for trail removal if that becomes necessary for future rail use. Although thousands of miles of rail line have been removed nationally, probably less than 100 miles has ever again been reconverted to rail use. Instead, such reconversion simply becomes too expensive after the removal of rail, ballast, and other infrastructure, and this has made renewed rail use too costly to pursue even though it would otherwise have been economically or socially justified. This was recognized by MDOT in the December 2022 draft of the Maine State Rail plan, which stated on page 60 that “once a rail corridor is converted to a different use, it does not return to rail use”. Additionally, despite the legal right for renewal of rail activities on a rail-banked line, in some instances, the outcry from trail users, NIMBYs, and others has made reconversion politically impossible even where economics and social need might otherwise favor it. Contrary to the explicit terms of Maine law, ripping up a rail line will not “protect and promote rail transportation” or preserve these lines for future rail use but, instead, will eliminate and destroy the possibility of such use of these lines, destroying rail service locally as well as undercutting regional rail use throughout this State.**
9. **Perhaps even more importantly, Maine Rail Service, LLC, which in December 2024 was chosen by MDOT to operate the Rockland Branch, is also interested in operating the Lower Road line between Brunswick and Augusta. This was shown first by Maine Rail Service’s proposal to include service on that line in its response to MDOT’s RFP for an operator on the Rockland Branch. Maine Rail Service is now in the process of preparing a modified proposal for the use of the Lower Road that it intends to submit to MDOT before the end of this month, showing its continued interest in this line. Rejection of any reasonable and practical proposal for rail operation of a State-owned line would be contrary to the terms of the Railroad Preservation Act and 23 M.R.S. § 75(1) governing the RUAC process. Therefore, action on LD 29 is premature at least until Maine Rail Service issues its modified proposal for MDOT’s review.**
10. **Rail with trail is also the only option that is consistent with the recently updated Maine State Rail Plan, which repeatedly states that MDOT will continue efforts to expand passenger rail service in Maine, including between Brunswick and Augusta based on the results of ongoing and future studies. See Maine State Rail Plan at Tables 3.6, 3.6, B.3,**

B.4 (March 2023). If rail is removed from this line, then the results of any such studies will be pre-ordained since any reversal of that action will not be economically feasible.

11. **TrainRiders supports trails, but not if they eliminate the possibility of future use of potentially viable rail lines. Trails can be built beside rail lines within railroad rights-of-way without disturbing existing rail.** Trail creation using this “rail with trail” (“RWT”) option is more expensive than interim trail use but preserves the line for future rail use while allowing trails to be constructed and used. Thus, the RWT option, but not a trail on an interim basis (also known as “trail until rail” or “TUR”), is consistent with the explicit wording and intent of the State Railroad Preservation Act. Only RWT preserves the rail as a vital and irreplaceable asset for the future economic development of this State.
12. **By statute, MDOT may only remove rail from a State-owned line or change that line to a nonrail use if it both goes through the RUAC process and “in consultation with a regional economic planning entity and a regional transportation advisory committee established in accordance with rules adopted under section 73, subsection 4, determines that removal of a specific length of rail owned by the State will not have a negative impact on a region or on future economic opportunities for that region.” 23 M.R.S. § 7107.** MDOT has never issued such a determination for any of the RUAC-studied lines, including the Lower Road. Instead, MDOT has pointed to the studies and recommendations issued by each RUAC to satisfy this requirement. Those studies and recommendations are those of the RUACs, not of MDOT. Furthermore, no such conclusion has been stated in any of those studies or recommendations. Finally, although representatives of such an entity and such a committee may have served on each RUAC, there has been no showing that MDOT was ever “in consultation” with that entity or committee with respect to any such determination or that the RUAC representative was authorized to act on behalf of that entity or committee about that determination. **Until such a determination has been made, consideration of LD 29 by this Committee is premature.**
13. The State of Maine's segment of Lower Road is the only rail access from the south to the State capital. It also provides the only rail access to communities between Brunswick and Augusta. Ripping the rail from this line would leave Augusta with rail access only from the north over the CSX-owned line between that City and Waterville. The CSX line, however, would dead end in Augusta if the State-owned portion of the Lower Road were to be removed, meaning that any rail service to and from Augusta would require trains to proceed from the CSX main line in Waterville down to Augusta and then back again, or vice versa. However, using the State-owned portion of the Lower Road would provide more direct service to the south of Augusta. Additionally, traveling down to Brunswick on the Lower Road is essential to any possible passenger rail service for the State capital since it provides the only direct line to Portland and other population centers to the south.

14. **The RUAC process was very flawed:**

- a. MDOT hired outside contractors to prepare reports detailing the relative costs of the TUR, RWT, and improving the line for passenger rail use, as well as the economic benefits of each. **The scope of these studies, however, was very limited**, excluding exploration of many benefits of rail use, and, based upon experience with another RUAC formed to evaluate the Mountain Division in Maine (where the RUAC study showed an initial TUR cost of about \$20 million, which was then increased by about 50% in a later MDOT study) underestimating the construction cost of TUR. Many railroaders also think that the costs of RWT and rail upgrades for passenger service in the RUAC studies were overestimated.
- b. **MDOT made no effort during the RUAC process to determine whether a railroad was interested in running service on the State-owned portion of the Lower Road.** Instead, MDOT concluded that no such interest existed because no party had approached it asking to operate on that line. MDOT failed to make such efforts in connection with the RUAC processes for both the State-owned portion of the Lower Road and the state-owned Mountain Division between Standish and Fryeburg. It turned out that the Conway Scenic Railway was and is interested in operating on the Mountain Division. As noted above, it also turned out that Maine Rail Services was interested in providing freight service on the Lower Road and remains interested in such operation to this day. Before obtaining authority to rip up the Lower Road, MDOT must take active measures to determine if any railroad is interested in operating on that line by properly evaluating any proposals it receives for that operation and, if no acceptable proposals are received, by issuing a properly prepared and administered Request for Proposals or equivalent action. In the absence of this, it cannot be said that there is no current interest in rail operation of the line.
- c. **MDOT made no effort to determine what properties along the State-owned portion of the Lower Road would be available for freight rail use or what businesses now on the line might desire to use this service if it were available.** Additionally, MDOT made no effort to determine how many other businesses could be attracted to this corridor if it were improved for freight use. This means that no estimate was ever made of the value of the economic benefits that would be foregone if even the possibility of freight use of this were to be destroyed. **This is not only a failure of the RUAC process as administered here, but it also means that MDOT has no basis for making the required determination that "removal of a specific length of rail owned by the State will not have a negative impact on a region or on future economic opportunities for that region."**

- d. **The RUAC study included no estimate of the number of passengers who might be attracted to a passenger rail service on the Lower Road other than commuters residing on or very near the corridor itself. First, experience with the Downeaster service shows that passengers, including commuters, tourists, and others, will travel relatively long distances to access passenger rail. The Downeaster service currently attracts riders from well north of its northernmost station in Brunswick, including from northern Maine and even the Canadian Maritimes. Additional northern passengers would presumably be attracted to a passenger rail service with a northern terminus in Augusta since it would be closer to where those passengers started their trips. Second, non-commuter travelers often use the Downeaster for business trips or essential visits like meetings, hospitals, and doctors. Third, the study assumed, without any apparent research, that no non-local tourists would ride on this portion of the Lower Road because the corridor has "very few of the types of attractions that draw visitors and tourists from outside of the Central Coast area." This unexamined and unsupported "fact" is no basis for assuming that no non-local tourists and non-commuter travelers would travel on this line.**
- e. **The RUAC study also projected ridership and rail passenger onboard spending levels based on Downeaster figures for the period from September 2021 through August 2022, much of which was in the heart of the COVID pandemic. Downeaster ridership during this period was extremely low, and many of those who did ride were reluctant to eat on the train since that would have required the removal of facemasks worn to protect them from infection. Projections based upon figures from that period inevitably result in distortions of future reality**
- f. **The RUAC study did not estimate the economic benefits that might result from purchases that potential rail passengers might make when they left the train but only included onboard spending. This was based upon a presumption that such passengers would already be making trips along this line and would spend no more than they now do. No basis was provided for making this assumption. Furthermore, a February 2005 MDOT study of Downeaster economic benefits found that Downeaster passengers residing outside of Maine and New Hampshire spent an average of \$237.41 in Maine for lodging, food, entertainment, and retail purchases on their trips. Using these figures, if only 10 out-of-state non-commuter travelers used a line each day, they would collectively spend \$2,374 per day, or \$866,510 per year in Maine. Correcting for the 54.55% uptick in the Consumer Price Index from 2005 through 2023 increases these figures to \$3,669 per day and \$1,339,185 per year.**
- g. **The RUAC studies estimated that 23% of trail users would come from out-of-state and that these non-local users would spend around \$118 per use in the local economy for a total of \$1.7 million to \$2.6 million being spent by non-local users each year. In its August 2022 New Hampshire Rail Trails Plan, the New Hampshire**

Department of Transportation determined that only 15% of New Hampshire rail trail users were from other States and that each non-local user spent \$40.71 in New Hampshire when using these trails. The New Hampshire study resulted from surveys of actual trail users and is available online at:

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjS4OG3xdWLAxX1FlkFHR0CFpMQFnoECBQQAQ&url=https%3A%2F%2Fwww.dot.nh.gov%2Fsites%2Fg%2Ffiles%2Fehbemt811%2Ffiles%2Fimported-files%2F2022-nh-rail-trail-plans.pdf&usg=AOvVaw2CPVepHeYo4GYcknWwwV\\_1&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjS4OG3xdWLAxX1FlkFHR0CFpMQFnoECBQQAQ&url=https%3A%2F%2Fwww.dot.nh.gov%2Fsites%2Fg%2Ffiles%2Fehbemt811%2Ffiles%2Fimported-files%2F2022-nh-rail-trail-plans.pdf&usg=AOvVaw2CPVepHeYo4GYcknWwwV_1&opi=89978449) at pp. 4-6, 63-64, and 66-68).

That study also references other studies that support this same range of economic benefits from this type of trail use. Using these figures, non-local users would spend between about \$389,289 and \$586,224 per year. Thus, the RUAC studies have aggressively overestimated the economic benefits of TUR.

- h. The study includes no estimate of any increase in property values resulting from the operation of a passenger rail service along the line, something that has been experienced by the Downeaster station communities and many other station communities throughout the country.
  - i. **The study includes estimates for the health effects of trail use. No such analysis was performed for rail use,** ignoring the reduction in air pollution, as well as traffic accidents, and resulting health benefits that would result from the replacement of transportation by car with travel by train. Although trail use could also result in such a reduction, this would only be for short-range travel since traveling by trail over longer distances would simply not be a viable travel option for many people, including most commuters.
  - j. The RUAC study shows that TUR construction on the State-owned part of the Lower Road would cost between \$34.3-43 million, with an RWT project costing about \$126.7-131.4 million, freight rail construction costs of \$55 million and \$363,000,000 for passenger rail service. **What the RUAC ignored, however, is that these studies show that initial TUR construction on this line would result in about \$29.6-37.1 million in value added to the State's economy, wages, and employment, with RWT resulting in about \$126-131 million, freight rail in about \$47.6 million, and passenger rail improvements resulting in about \$314.3 million in such benefits. These benefits significantly reduce the difference between overall costs net of overall economic benefits for the three options.**
15. Providing a passenger rail service for commuters along the State-owned portion of the Lower Road would benefit not only those on that line but also permit a potential commuter outlet for those residing in Portland and other communities south of Brunswick who need to travel to Augusta and other places along the Lower Road . This

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would include significant numbers of State employees, reducing congestion and harmful travel emissions, and increasing safety and convenience along I-295 and in the Augusta area. A quick look at the Capitol Campus shows that cars and their need for roads, parking lots, and garages dominate much of the space in commuter destinations. One way of counteracting this chokehold is to encourage passenger rail use versus travel by automobile.

For all of these reasons, as well as others, this Committee should vote out LD 29 as "Ought not to Pass".

Sincerely,



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