

LOWER ROAD RAIL USE ADVISORY COUNCIL
MINORITY REPORT TO MAINE COMMISSIONER OF TRANSPORTATION
RECOMMENDING RAIL WITH TRAIL

August 23, 2023

I. Background of Lower Road RUAC

The Rail Use Advisory Council (“RUAC”) process is one of the first steps in any attempt to dismantle state-owned track in Maine or to change that track to non-rail use. See 23 M.R.S. § 7107. That process begins with one or more governmental entities representing communities along a state-owned rail corridor filing a petition with the Commissioner of Transportation requesting that the Maine Department of Transportation (“MDOT”) review a nonrail use of that corridor. See § 75(1). The Commissioner is then required to notify the Joint Standing Committee on Transportation (the “Transportation Committee”) of that filing and “may” appoint a RUAC “to facilitate discussion, gather information and provide advice to the [C]ommissioner regarding future use of the rail corridor”. Id. The RUAC is then to review and make recommendations on “the likelihood, benefits and costs of potential uses of the rail corridor”. Each RUAC can have 9-15 members and must submit a report to the Commission on its findings and recommendations within 9 months of convening its first meeting. See §§ 75(2), 75(4). During that time, it must hold a minimum of one public hearing located in the geographic area along the rail corridor. See § 75(3). If the report includes a recommendation for track removal or nonrail use, and the Commissioner concurs, then the Commissioner is required to seek legislative approval of that recommendation by submitting proposed legislation to the Transportation Committee. See § 7107.

The Merrymeeting Trail Board of Supervisors (the “Trail Board”) is a joint board responsible for administering an Interlocal Agreement entered into by the Towns of Gardiner, Richmond, Bowdoinham, and Topsham to facilitate the planning, construction, and maintenance of a multi-use trail connecting the Androscoggin River Pedestrian Bike Path in Topsham, the Village Center in Bowdoinham, the Village Center in Richmond, and the Kennebec River Rail Trail in Gardiner. By letter dated February 11, 2022, the Trail Board asked the Commission to appoint a RUAC to explore the use of a currently unused State-owned rail line between Brunswick and Augusta. This corridor is part of what is known as the “Lower Road” which starts at Royal Junction in Yarmouth, runs up to Brunswick, then, just north of the northern terminus of the Downeaster passenger rail service at Brunswick’s passenger rail station, cuts over to run to Augusta and on to Waterville where it rejoins what is now the CSX mainline (which itself runs from the Maine-New Hampshire border in the Berwick area, through Portland, Lewiston-Auburn, Waterville, and Bangor, terminating in Mattawamkeag). Filed with the Trail Board’s letter were resolutions of each of the municipalities that had entered into the Interlocal Agreement, as well as a letter from the Kennebec River Rail Trail Board of Supervisors, supporting the Trail Board’s petition. In response to this letter, the Commissioner, in

November 2022, appointed a RUAC to study the use of the part of the Lower Road from its cut-off to Augusta in Brunswick to the east end of the rail bridge over the Kennebec River in downtown Augusta. This is a 33.5-mile-long corridor. The Kennebec River Rail Trail runs beside the northernmost 6.3 miles of that corridor with rail currently remaining in place.

The Lower Road RUAC first met on November 30, 2022, meaning that the RUAC's report is to be filed with the Commissioner no later than August 30, 2023. The RUAC members held multiple meetings, as well as a public hearing held on June 22, 2023. A final vote of the RUAC resulted in 11 members recommending ripping up the rails and other rail infrastructure along the line and replacing it with a trail (the "trail until rail" option); 3 members voting to recommend construction of a trail alongside the line, leaving the rails and other rail infrastructure in place (the "rail with trail" option); and no members voting to keep the current rails and associated infrastructure in place without building a trail. The majority has prepared a report of its position to be delivered to the Commissioner, and this current report represents the position of the minority that voted for the rail with trail option.

II. The Options

Any RUAC works within a pre-existing legislative context. The Maine Legislature has determined that "a viable and efficient rail transportation system is necessary to the economic well-being of the State" and that "the State must take active steps to protect and promote rail transportation in order to further the general welfare". § 7102. The legislation authorizing the creation of RUACs states that any non-rail use of a State-owned rail line must be interim in nature and must preserve the corridor for future rail use. See §§ 75(1), 7107. At the very least, this puts a heavy burden on those who advocate for the removal of rail, ballast, and other infrastructure from a State-owned rail corridor to unquestionably demonstrate that this removal will not interfere with potential future rail use of that line.

Each RUAC, including this one, has considered a State-owned rail line for which the only proposed nonrail use is a trail. This has effectively provided each RUAC with only three options that it can recommend. First, it can recommend that nothing be done with the rail line. Each State-owned line thus far considered by a RUAC, however, has not been used for rail service for many years, and, during that time, has received only minimal maintenance. This has resulted in the gradual deterioration of each line to the point where repairs and some level of upgrades would be necessary for any new rail use, with the exact level depending on the type and level of use desired. Failure to take any action will only result in further deterioration and will leave the line unused for any public purpose unless and until increasingly expensive repairs and upgrades are made to that line.

Second, the RUAC can decide to recommend the removal of the tracks and other rail infrastructure from the line and the construction of whatever might be needed for an alternate use of that rail corridor. When the new use is a trail, this is usually referred to as

the “trail until rail” option referenced above. In theory, trail until rail preserves the corridor for potential future rail use since the trail can be removed later and replaced with new rail infrastructure. In reality, however, this is untrue, since the cost of reconstructing a rail line from scratch is an order of magnitude greater than repairing even a substantially deteriorated corridor. As a result, the removal of tracks and other rail infrastructure from a rail corridor means that the line will never again be used for rail purposes. Experience across the country shows that reconversion of a line to rail use simply becomes too expensive after rail infrastructure has been ripped away, even where future rail use of the line would otherwise have been economically or socially justified. Tearing up rails destroys any future economic, social, and environmental benefits that rail use of a line could otherwise provide.

Third, the RUAC can recommend that a trail be constructed next to track on a State-owned rail line (the “rail with trail” option referenced above). This allows for the construction of an operational trail while at the same time permitting the rail infrastructure to remain in place. This is the only option that both provides for construction of a trail and, at the same time, truly preserve the corridor for possible future rail use. On the other hand, the cost of constructing a trail with existing rail is much more than simply removing the rail and replacing it with a trail.

III. The Fallacy of Rail Until Trail; Other Issues

Several factors make the trail until rail option a poor choice for the people of Maine and lead to the conclusion that only rail with trail will serve the public and prevent the destruction of what is now a valuable economic asset. These include:

1. As noted, **the removal of rail infrastructure from this portion of the Lower Road will mean that, as a practical matter, the line between Brunswick and Augusta will never again be used for rail purposes** simply because the reinstallation of that infrastructure for future rail use will never be economically viable. In the last several decades, thousands of miles of rail have been removed from rail lines, with those corridors then theoretically being preserved for later rail use. Most of this has occurred under a federal rail banking law that mirrors what the majority would like to happen here. Of those thousands of miles, however, less than 100 miles have ever been reconverted to rail use, and, given the cost of reconversion, there is no reason to think that this will change. Additionally, reconversion of a trail to a rail line has, in a very few instances, been politically opposed by those who have become used to traveling on the trail and by adjacent landowners who do not want an active rail line next to their properties even though reconversion is a legal right. This, at the very least, further increases the costs of reconversion.

2. Because of the foregoing, the removal of rail from the Lower Road under the rail until trail option violates Maine law. By statute, any removal of rail from a State-

owned line can occur only if that line will be preserved for future rail use. See 23 M.R.S. §§ 75, 7107. **Trail until rail will destroy, not preserve, future rail use on the line in violation of the very specific language of those statutes.** Additionally, it will violate the legislative directive that “the State must take active steps to protect and promote rail transportation in order to further the general welfare.” § 7102.

3. **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.

4. As noted by the majority, the RUAC report prepared by VHB and RKG projects that the rail with trail option would cost between approximately \$146-150 million to construct a trail while leaving the rail in place, whereas trail until rail would only cost between about \$34-43 million. **A bare statement of costs for the two options, however, is overwhelmingly incomplete since it does not include the benefits lost to the people of Maine if the rail is removed, never to be replaced again.** Additionally, because the scope of the VHB and RKG studies was limited, many of the potential benefits of rail service that would be foregone remain unquantified. This would include the following:

- Those studies did not include additional purchases rail passengers would make when they left the train, but, instead, only contained a relatively low estimate of between about \$172,000 and \$258,995 for onboard spending by those passengers. This was based upon the presumption that all rail passengers using the service were already making the same trip that they would make by train (equivalent to saying that these passengers already commute along the line) and would spend no more on these items than they now do. There is, however, no basis for assuming that all rail passengers would be commuters. 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 10 out-of-state non-commuter travelers used the Lower Road each day (which seems reasonable given that RKG estimated a total ridership of about 75,190 round trips per year), then they would collectively spend \$2,374 per day, or \$866,510 per year in Maine. Correcting for the 54.55% increase in the Consumer Price Index from 2005 through 2023 increases these figures to \$3,669 per day and \$1,339,185 per year.

- The studies include no estimate for 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, as well as many other station communities throughout the country.
- The studies include no estimate of the number of passengers who might be attracted to a passenger rail service on the Lower Road other than commuters 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 travel by 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 that had its northern terminus in Augusta since it would be closer to where those passengers started their trips. Second, non-commuter travelers regularly use the Downeaster for business and other non-tourist trips that occur on a non-regular basis, such as travel to meetings, hospitals, doctors, and other necessary non-tourist locations. Third, VHB and RKG have, for the purpose of their studies, assumed without any apparent study 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.
- The VHB and RKG studies 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 removal of facemasks worn to protect them from infection. Projections based upon figures from that period inevitably result in distortions of future reality.
- At no point was a survey conducted as to what properties might be available for freight rail use for this part of the Lower Road, or what businesses along this line might desire to use this service if it was available. Perhaps more importantly, no effort was made to determine how many businesses could be attracted to this corridor if it were improved for freight use. Conversely, no estimate of the value of the

economic benefits that would be foregone if such service were not available was ever attempted by VHB, RKG, or MDOT.

- The studies include 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.

5. The majority's emphasis on the costs of constructing a trail with rail in place also ignores another important point. RKG's economic analysis of the various options indicates that construction of a rail until trail project would have a cost of, as indicated above, between about \$34-43 million, with a rail with trail project costing between about \$146-152 million. That study, however, also shows that trail until rail c would result in between about \$22-28 million in value added to the State's economy, wages, and employment merely from construction activities necessary for building the trail, with rail with trail resulting in between about \$126-131 million of such value. The net of these figures would be about \$12-15 million in costs in excess of value added for the construction of a trail until rail project and about \$20-21 million for rail with trail. **Keeping these overall benefits in mind significantly reduces the difference between overall costs net of overall economic benefits for the two options as compared to just comparing construction costs.**

6. **The Downeaster built a layover facility in Brunswick to service its trains when that service was extended to that municipality. This could create some operational difficulties if this part of the Lower Road is torn up and passenger rail service is then extended northwards to Waterville and Bangor along the only other available corridor, which would be the CSX mainline between Portland and Bangor.** In such a case, the Brunswick facility would be at the end of a stub end of rail service ending in that town, which could require Downeaster trains to travel up from Yarmouth to Brunswick for overnight service. At the very least, this would increase costs requiring a deadhead run up to Brunswick for trains that would then have to travel down to Yarmouth to join the CSX mainline before proceeding north. Retaining this part of the Lower Road would allow those same trains to merely head north from Brunswick to Augusta and on to Waterville and Bangor, as well as the reverse, without having to backtrack to Yarmouth.

7. **The timing of any recommendation here is unfortunate.** This is not the time to consider ripping up the rails along the Lower Road, or even rails with trails on that corridor. COVID has changed transportation needs and desires. How this will affect future

ridership trends remains unknown, so giving any decision about this rail line the gift of time would enable all interested parties to make a far better decision than is now possible.

IV. Conclusion

The RUAC process is a flawed tool for determining whether a State-owned rail line should be converted to other uses. First, the statutorily recommended membership for each RUAC includes one member representing an organization advocating for rail use or preservation, one member representing an organization advocating for recreational trail use or advocating for bicyclist or pedestrian interests, and several members representing municipalities along the line. In practice, many of the municipal representatives, as well as some representatives of State agencies who have become members of a RUAC, are individuals who are familiar and have expertise with trails, but none with rails, and, in fact, several municipal representatives on each RUAC have been trail advocates. This does not mean that these RUAC members have not acted in good faith in evaluating the information provided to them, but it does mean that their knowledge base makes the RUAC an imperfect tool for evaluating the benefits of rail use of a State-owned corridor, particularly in comparison to the utilization of that corridor for a trail.

Second, the only real source (other than the lone rail advocate on each RUAC) of rail-related information for these trail-oriented RUAC members is MDOT and, in particular, the contractors that MDOT has hired to examine these lines. Presumably because of time and cost constraints, however, the scope of the studies contracted for by MDOT have been limited. For example:

- As noted, the VHB and RKG studies performed for the Lower Road RUAC include off-trail purchases that would be made by non-local trail users, but not off-train purchases that would be made by rail passengers. As stated in the RKG report “while it is possible that passengers could purchase goods and services at businesses near a potential new station/platform, these are not quantified in this analysis and difficult to distinguish from what would otherwise be normal work-day purchases at other businesses along a commuter’s route”, reflecting the presumption that all such passengers would be commuters. Additionally, RKG’s scope of service was specific to onboard passenger ridership for potential passenger rail service along this part of the Lower Road, eliminating any possibility that these studies would include off-train purchases by those passengers.
- In response to a question as to why health benefits were not included for rail use but were for trail use, VHB and RKG responded that “It was beyond our scope to determine potential air quality benefits of potential passenger rail service and trail use.”

- In response to a question as to why the economic impact of new development that might result from passenger rail use on the corridor was not included, VHB and RKG responded that “this was outside RKG’s scope of services with MaineDOT.” This was repeated in RKG’s study where it is stated that “A more thorough and detailed analysis of the potential fiscal and economic benefits associated with Passenger Rail use along the Lower Road Rail Corridor is beyond the scope of this analysis and would require more definitive input including the identification of rail station site(s) and the type and level of development for each station.” However, the study was performed without providing any potential station stops other than Augusta and Brunswick, making such an analysis impossible.
- In response to a question as to why study estimates of trail use included users from any location, whereas they only included possible commuters from Augusta and Brunswick for rail use, VHB and RKG merely responded with a quote from one of their studies stating that “this is not intended to serve as a study or definitive metric for potential Passenger Rail ridership, it does indicate that there is some possibility for ridership among those workers commuting to/from Augusta and/or Brunswick.” No explanation was given for why the studies did not include potential rail ridership originating from a broader geographical area.

The overriding issue here is whether there is any possibility that rail service will ever once again become desirable between Augusta and Brunswick. If not, then it does not really matter what is done to the tracks on the Lower Road. If, however, communities along that route, including Maine’s capital, desire to have even the hope of rail service in the future, then rail with trail is the only viable option that to be pursued here. Communities along the line (including Maine’s capital), as well as the public at large, need to be aware that they are giving up a valuable tool for economic development by opting to support trail until rail, a loss that cannot ever be corrected. Based on the current studies, the stakes involved in taking the uninformed gamble that would result from ripping up the rails from this line remain unknown. In the absence of all of the facts, recommending the rail with trail option is the only rational choice since it minimizes that gamble by preserving the possibility of future rail use along this corridor and resulting economic benefits. Unlike the trail until rail option, that choice also, as a practical matter, complies with current Maine law and with the spirit and wording of Maine’s State Rail Plan.

The following members of the Lower Road Rail Use Advisory Council endorse this report:

F. Bruce Sleeper, President
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Matt Nixon, Member
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Doug Ebert, Chairman
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