



**Miami Downtown Development Authority (DDA) Board of Directors
Findings and Comments regarding the Federal Aviation
Administration, Department of Transportation, 14 CFR Part 77,
[Docket No. FAA–2014–0134] RIN 2120–AF90 - Proposal to Consider
the Impact of One Engine Inoperative (OEI) Procedures in
Obstruction Evaluation Aeronautical Studies.**

July 16, 2014



**Urban Design and Transportation Committee Meeting – June 6, 2014
Miami DDA Board of Directors Meeting – June 20, 2014**

Purpose and Intent

Please accept this Report in its entirety as part of the record and as a part of the Miami Downtown DDA Board of Directors Findings and Comments regarding the Federal Aviation Administration, Department of Transportation, 14 CFR Part 77, [Docket No. FAA-2014-0134] RIN 2120-AF90 - Proposal to Consider the Impact of One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies. The Report is organized as follows:

1. *Overview of the Miami Downtown Development Authority and Board of Directors.*
2. *City of Miami Transformation.*
3. *Effects of the Proposed OEI Procedures on the City of Miami Downtown*
4. *History of the 2007 City of Miami, Miami-Dade County and FAA collaborative development of the Miami-Dade County Zoning Ordinance governing building heights.*
5. *Miami DDA Board of Directors Findings and Comments.*

1. Overview of the Miami Downtown Development Authority and Board of Directors

The Miami Downtown Development Authority Board of Directors consists of 15 members, which includes City of Miami and Miami-Dade County elected officials, a State of Florida representative, a representative from the Greater Miami Convention & Visitors Bureau, business and property owners, real estate professionals, developers, and attorneys-at-law.

The Mission of the DDA is to grow, strengthen and promote the economic health and vitality of Downtown Miami. As an autonomous agency of the City, the DDA advocates, facilitates plans and executes business development, planning and capital improvements, and marketing and communication strategies. The Board's policy direction is implemented by the Executive Director's oversight of a multi-disciplined management team. The DDA responsibilities include the following:

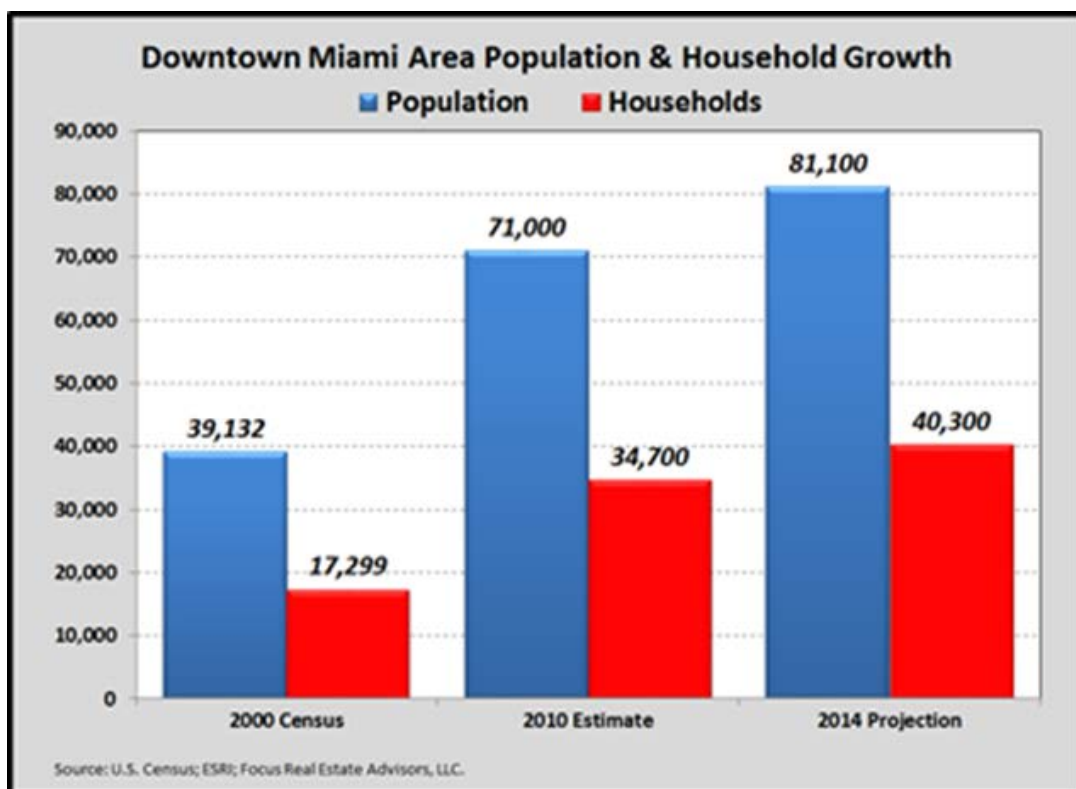
1. Information clearinghouse for Downtown Miami.
2. Business recruitment and technical assistance.
3. Market research and data collection.
4. Sponsorship and partnership building.
5. Urban and transportation planning.
6. Program development and execution.
7. Beautification and greening.
8. Capital improvement project coordination.
9. Marketing & public relations.

2. Downtown Miami's Transformation

Downtown Miami has emerged as a premier urban center in the State of Florida with a rich balance of live, work, and play opportunities for both residents and visitors alike. Downtown Miami's most striking changes in the last decade are found in its transformation into a truly comprehensive residential neighborhood of the City of Miami. Today, new development projects pepper the Downtown landscape, ushering the next wave of activity as the destination continues growing.

Population Increase

The changes in resident population to Greater Downtown Miami are making downtown more dynamic. Population and household growth Downtown Miami increased substantially from 2000 to 2010. The 2011 resident population in the Downtown was 71,000 people. The below chart indicates the total population in the Downtown increased by approximately 31,768 people during the ten year period from 2000 to 2010 for a 81% gain. The 2014 Downtown population is estimated at 81,800 people. The composition of the Downtown population is generally consistent with demographic shifts in other U.S. Metro markets including increasing percentages of households comprised of unmarried singles, young married couples, empty-nesters and single-parent households. The current (2013) estimated daytime population is 220,000 persons. The Downtown area has become a genuine "live-work" environment attracting a diverse population including an increasing proportion of young working professionals. The Downtown is both a residential neighborhood and well as vibrant central business district.



Population & Household Trends/Estimate

Increasing employment opportunities in and around downtown Miami will continue to drive population growth. With industry clusters in legal, management consulting, accounting, finance, and technology established in Downtown, private and institutional entities are employing professionals at the upper end of the pay scale resulting in a strong downtown resident workforce. The per capita income of Downtown area residents already exceeds that of both the City of Miami, by 50%, and Miami-Dade County, by 70%.

Economic Transformation

The Downtown Miami area experienced a dramatic, permanent transformation during the past decade. Real estate development in the Downtown area including the massive expansion of high quality housing with high-rise residential development being the most dramatic and widely publicized factor in the physical transformation of the Downtown area during the past decade. Downtown Miami has emerged as a unique 24-hour urban center and expanding international gateway city. All major real estate land use categories have expanded including the following: Residential (Condominiums and Rental Apartments); Office; Retail and Other Commercial; Industrial (Warehouse); Hotel; Public Facilities (e.g. government buildings, parking structures, transportation facilities, etc.) and Arts & Recreation (e.g. the Arsht Center for the Performing Arts, American Airlines Arena, parks, museums, etc.). The dramatic changes in physical infrastructure and urban form are evident in the photographs below:



2000 Downtown Miami Skyline

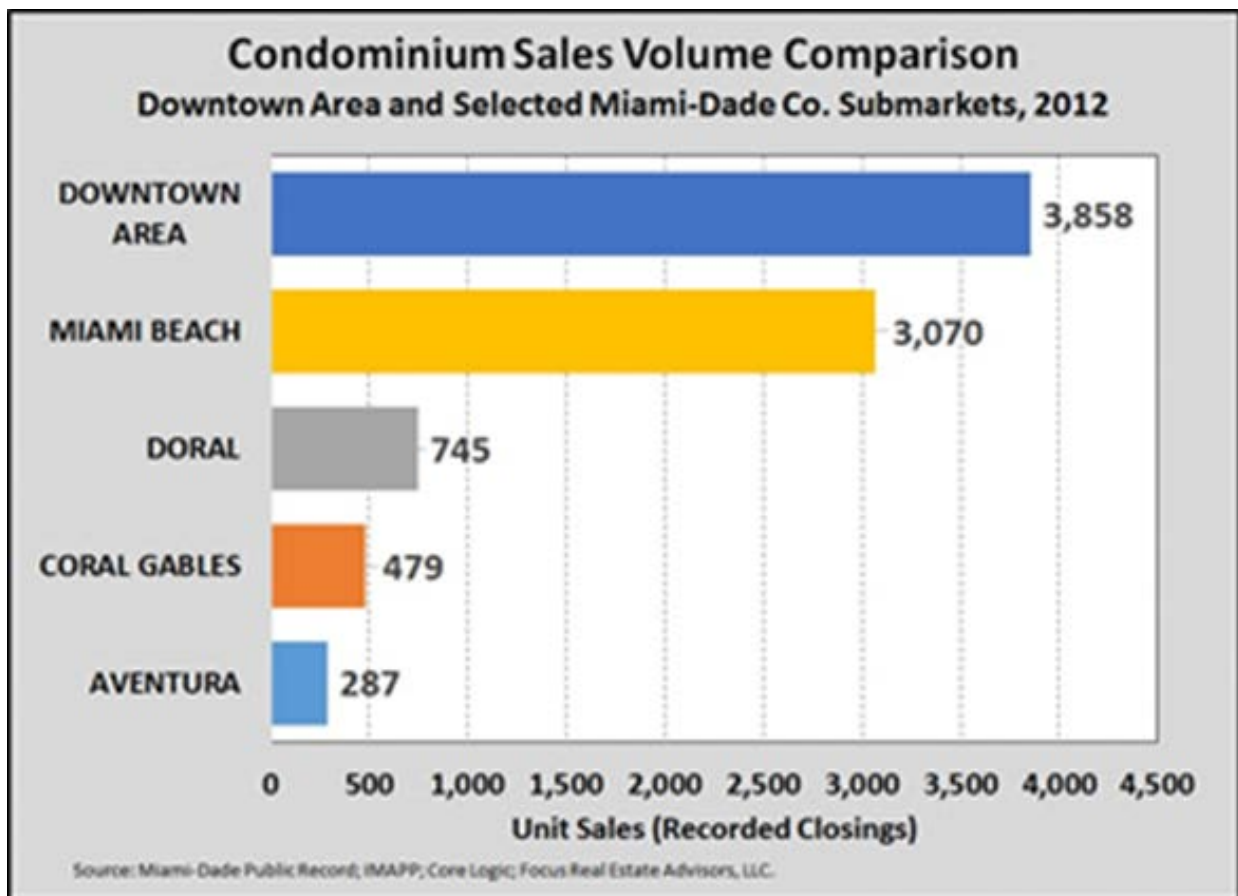


2007 Downtown Miami Skyline

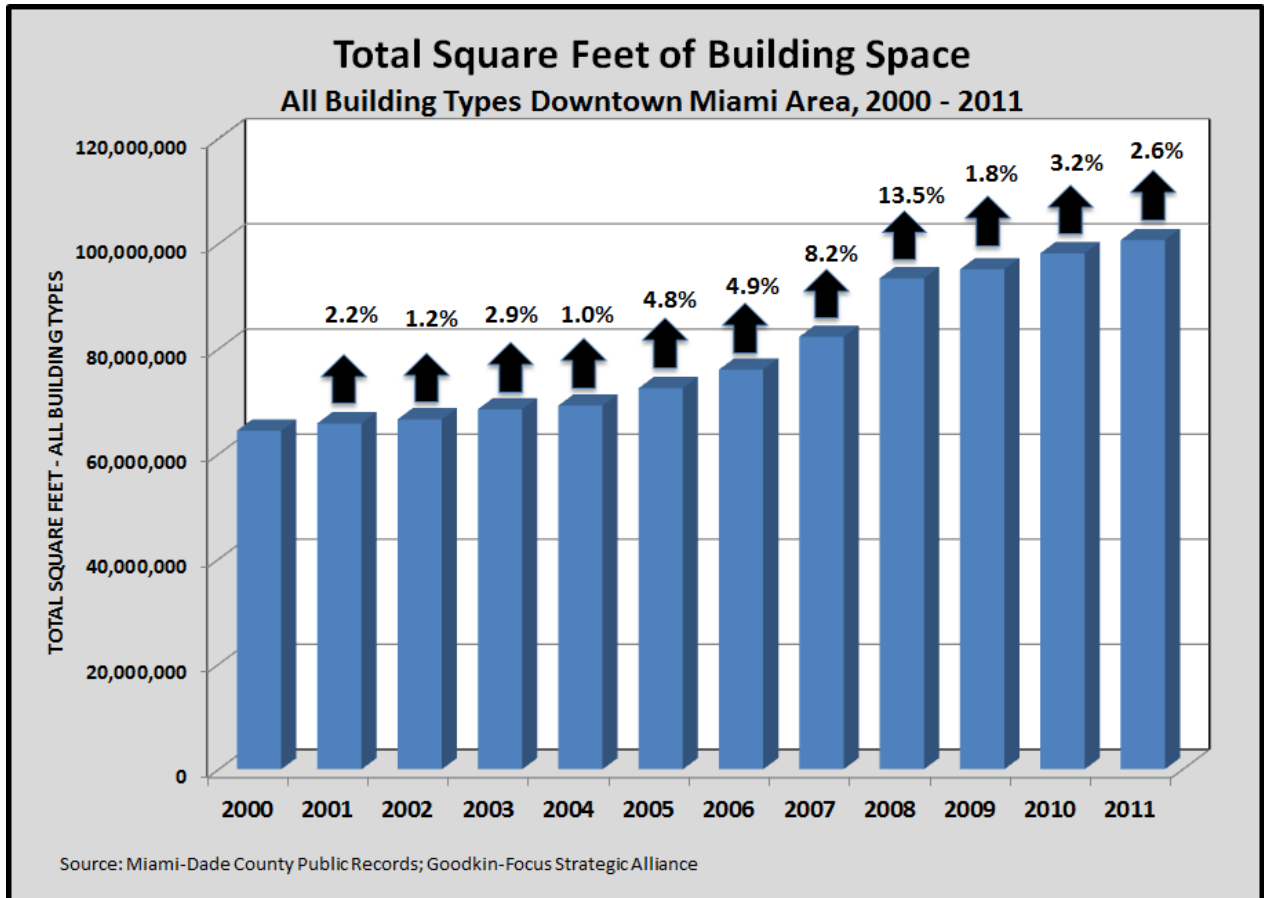


2011 Downtown Miami Skyline

The Downtown residential real estate market has progressed from a recovery period after the recent recession to a new expansion cycle with numerous projects under construction and a growing pipeline of planned and proposed projects. This includes large-scale, mixed-use projects, cultural facilities and transit facility improvements as well as residential projects, all contributing to an increasingly vibrant 24-hour urban environment in the Greater Downtown Area. The charts below demonstrate that Downtown Miami accounts for the largest volume of condominium sales among major urban sub-markets in Miami-Dade County (2012).



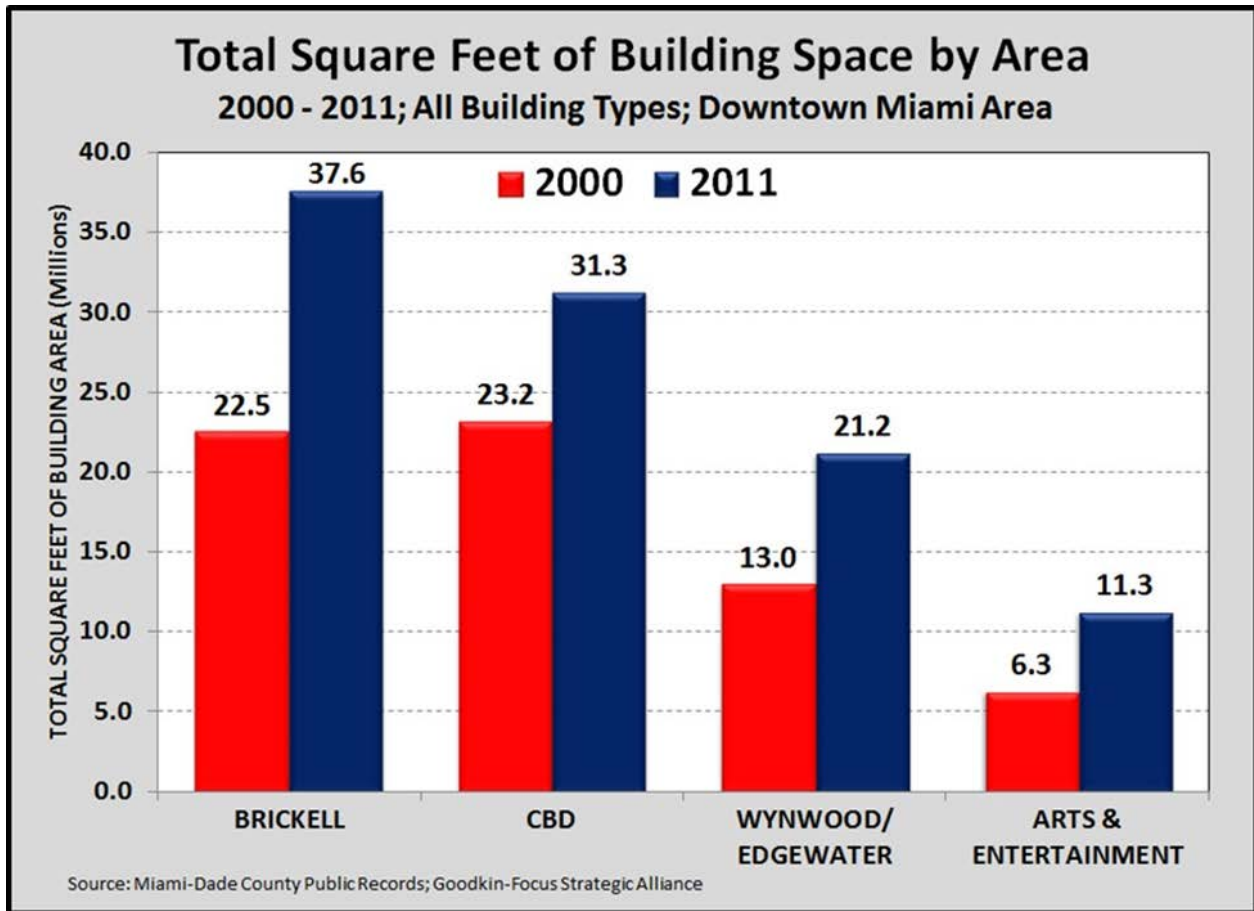
Development in Downtown Miami has been climbing steadily since 2000. The below chart indicates the overall additional square-footage delivered to Downtown Miami from 2000-2011. The development pipeline in Greater Downtown Miami has accelerated in 2012 with commencement of construction on several large projects.



The map on the preceding page, Greater Miami Downtown Pipeline – 2014, depicts that the current active development pipeline within the Downtown submarkets includes 55 projects, of which 28% are already approved and under construction while the remaining 45% have begun active marketing efforts. Several of these projects span one or more city blocks and involve major commercial retail and office entities as well nationally recognized residential developers.



Miami International Airport is west of Downtown (flight paths traverse entire Downtown)



The chart above clearly depicts an increase in total square-feet of building space across the four downtown sub-markets during the last decade. Brickell realized the largest total increase with 15.1M SF or 67%. However, the Arts & Entertainment area saw the largest percentage increase with a 79% increase in total building square-feet. The CBD and Wynwood/Edgewater submarkets realized gains of 35% and 63%, respectively.

The City of Miami has transformed and will continue as a dense, urban downtown activity center and economic engine for the Miami-Dade County metropolitan area, South Florida and the State of Florida. Downtown, the Port of Miami and Miami International Airport are three distinct economic engines. Please refer to Attachments A-F for detailed statistical information regarding the Greater Downtown Miami Real Estate Market, Areas of Influence, Population and Demographics, Office Market and Economic Impact of Downtown Miami.

See Attachments A through F as background evidence and Findings of Fact for the above information.

3. Effects of the Proposed OEI Procedures on the City of Miami Downtown

The FAA's proposal to take OEI into consideration for Part 77 evaluations has not been finalized, however, the application of an OEI standard would be extremely limiting. The OEI standard initiates at the end of the runway and extends 50,000 feet horizontally and upwards at slope of 62.5:1. From the end of a runway, every 62.5 feet horizontally, the vertical distance would rise by 1 foot. As an example, for a location 2 nautical miles from the end of the runway, the OEI surface would be at 184 feet AGL. By comparison, using the 40:1 slope that is currently considered in Part 77, the surface would be at 304 feet AGL for the same point. This means that a strict application of an OEI standard in Part 77 would decrease the permissible structure height by 122 feet at the same location.

Our preliminary assessments of the impact of an OEI standard in Part 77 obstruction review process, using the current 62.5:1 slope, indicate an estimated 50% reduction in building heights in the Downtown, which shall have a significant impact to development of the City of Miami Downtown. Although the specific OEI effects (property by property) may have on future development of the Downtown is unclear, if the OEI standard were in effect today and had applied to existing and proposed structures the ability to locate new buildings and/or reconstruct existing buildings would have detrimental effects on the current and future economic vitality of the City of Miami.

Economic impacts.

The effect of the OEI change would be that the economic responsibility to provide for sufficient flight clearances would be shifted from the airlines, where it has been since the FAA began evaluating hazards to air navigation over seventy years ago, to individual property owners. Proposed new construction exceeding these new OEI criteria would receive FAA determinations of hazard, which may impact the ability to obtain financing, insurance, necessary permits, and comply with local zoning requirements. The impacts to height would have a dramatic impact on the future economy of Miami-Dade County. The estimated 50% reduction in buildable heights in Downtown would limit the office market in continuing to expand in terms of new business and additional employees. **Our calculations indicate that within the DDA District the proposed reductions would, over time, cost Miami-Dade County an estimated 260,000 jobs and an annual impact of \$105B of economic output (in 2013 dollars)¹. Likewise, it is estimated that a \$500M annual reduction in ad valorem value would be observed.**

Any new OEI policy changes that result in loss of building height and density would apply to any future development of projects on sites with existing FAA determinations of no hazard. The FAA's advisory opinions of "hazard" or "no hazard," shall result in the "downzoning" of a development site or a building,

¹ Assumes 1. complete development in downtown Miami allowed under the Miami 21 zoning code (less right-of-ways); 2. 25% of gross square footage allowed for core and structures; 3. 25% of rentable area allotted for parking; 4. 235 sq. ft. of RBA per employee as is normal in Miami office market; 5. The mix of private sector jobs in downtown will continue into the future with the largest economic drivers coming from Professional & technical services and Banking and Finance.

limiting a property's development potential and value. Any change to the FAA's policy related to the determination of hazard or no hazard has expansive ramifications throughout real estate development and investment, public-private partnership initiatives, and the feasibility of operating affected existing properties in the long-term.

The real issue is not with OEI procedures developed by progressive airports like MIA. Rather, the allowance of proprietary paths by the air carriers. These proprietary paths provide a competitive advantage (monetary) over competitors, while ignoring the cost imposed upon the cities and land owners therein. Prior to taking steps to impose the OEI policy, a singular and non-proprietary flight plan should be established for all carriers below an altitude of 10,000 feet. These plans must be developed with FAA input, unique to a particular airport and its outlying geographic landscape, utilizing municipal government knowledge of the airspace, development efforts, and future land use.

There are real valuation concerns that property owners should have relative to this potential change, and it is our opinion that the effects of the proposed change are not yet well understood by the real estate community. **For the developers and investors in prospective projects, the current uncertainty of development density causes expensive delays and inhibits new investment in real estate projects that are often good for the community and that offer solid contributions to local economic development.**

4. History of the 2007 City of Miami, Miami-Dade County and FAA collaborative development of the Miami-Dade County Zoning Ordinance governing building heights

In 2007, the FAA Airports Obstructions Standards Committee (AOSC) initiated the national OEI Pilot study. Miami International Airport (MIA) was one of five airports participating in the pilot. The goal of the study was to match the varying individual air carrier OEI policies into a more singular "airport-wide" OEI policy. Miami-Dade Aviation Department (MDAD) coordinated the study and eventual zoning ordinance provisions in close cooperation with the FAA Air Traffic Division's Southern Regional Office, Air Traffic Control Tower and National Air Traffic Controllers Union (NATCA). MDAD established a Technical Users Group (TUG) composed of MDAD, FAA, FDOT, Airlines, IATA, and a consultant team which included examination of the following: Three-Dimensional Collection of Existing and Proposed City Of Miami Buildings; Modeling of Existing Airplane Out Procedures as Provided by TUG Users (AA, UA, DL); Preparation and Modeling of Proposed Airplane Engine Out Procedures (Conforming To Draft FAA Advisory Circular). The result included Recommendations of Potential Alternative High Structure Set-Aside Zones, FAA ATO Key Component for County Approval (2007), Surfaces and Enforcement Codified into the Miami-Dade County Zoning Ordinance (see Attachment G) and a Memorandum of Agreement with the City of Miami. The outcome increased the maximum allowable height of structures and a greater developable area within the Central Business District of the City of Miami. The 2007 Zoning Ordinance underwent a comprehensive public hearing review process in close cooperation with the FAA of which the outcome was to increase the maximum allowable height of structures and allow greater developable

heights within the City.

In late 2012, reports surfaced that the FAA was considering the establishment of OEI standards. **In 2012, an FAA OEI Report recommended that airports (cities/counties) that have developed and approved zoning ordinances should be allowed to maintain and utilize their established ordinances.**

In March 2013, a meeting was convened by the DDA, with participation by MIA reps, the City of Miami, numerous development community representatives and property owners, and the FAA (Mr. John Speckin), to discuss the proposed change. Mr. Speckin at that meeting noted that “the 2007 County Zoning would not be affected by the new OEI provisions.” Furthermore, Mr. Speckin stated “the FAA has no new criteria that would require changes to the Miami-Dade County approved building heights. Although the FAA has explored changes to OEI related take-off gradients, the MIA Pilot study did not recommend a change in take-off gradient or change to the approved Zoning Ordinance establishing building heights. Mr. Speckin agreed to review the specific OEI impact on MIA and provide a letter stating that the 2007 Zoning Height Policy will not be impacted. As a follow-up to the meetings, the DDA prepared correspondence in 2013 and 2014 requesting FAA verification in writing. No written verification as of this date has been provided by the FAA.

During the past 36 months, several development projects, who have complied with the 2007 Zoning Height Policy have been either found to be a “Hazard” or were lowered by the developer to obtain a “No Hazard” approval from the Obstruction Evaluation/Airport Airspace Analysis (OE/AAA). Between, the proposed OEI policy change and prioritizing the carrier routes over that of municipalities and private land owners, property owners will seek to challenge the dividing line between the portion of airspace in the public domain and the portion protected as an incident of land ownership against invasions by aircraft. The potential monetary damage to property owners and the regional economy are too great to ignore.

5. Miami DDA Board of Directors Findings and Comments

Please accept this Report in its entirety as part of the record, including all background and data as a part of the City of Miami Downtown Development Authority (DDA) Board of Directors Comments regarding the Federal Aviation Administration, Department of Transportation, 14 CFR Part 77, [Docket No. FAA–2014–0134] RIN 2120–AF90 - Proposal to Consider the Impact of One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies.

The City of Miami Downtown Development Authority (DDA) Board of Directors Findings indicate that including OEI procedures in the Part 77 analysis will have a dramatic impact on City of Miami, specifically development within the Downtown. While the FAA is not authorized to grant or deny construction projects, its determination that a pending or existing structure presents a “hazard” to the OEI plan will severely limit maximum permissible structure heights in the Downtown. Implementation of the proposal will shift the economic costs of providing an OEI plan from the airlines and airports to the surrounding

communities. **Our preliminary assessments of the impact of an OEI standard in Part 77 obstruction review process, using the current 62.5:1 slope, indicate an estimated 50% reduction in building heights in the Downtown, which shall have a significant impact to development of the City of Miami Downtown. Our calculations indicate that the proposed reductions would, over time, cost Miami-Dade County an estimated 260,000 jobs and an annual impact of \$105B of economic output (in 2013 dollars). Likewise, it is estimated that a \$500M annual reduction in ad valorem value would be observed. For the developers and investors in prospective projects, the current uncertainty of development density causes expensive delays and inhibits new investment in real estate projects that are often good for the community and that offer solid contributions to local economic development.** Therefore the DDA Board of Directors provides the following comments regarding policy changes to 14 CFR Part 77, [(Docket No. FAA–2014–0134) RIN 2120–AF90] related to the One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies:

- A. *Preserve the previously established 2007 Miami-Dade County, Code of Ordinances, Part III – Code of Ordinances, Chapter 33, Article XXXVII, Miami International Airport (Wilcox Field) Zoning which provided for one engine inoperative obstruction evaluation criteria in aeronautical studies (see Attachment G).*

In 2007, the City, County, and Miami International Airport in close cooperation with the FAA, adopted via Miami-Dade County, Code of Ordinances, Part III – Code of Ordinances, Chapter 33, Article XXXVII, Miami International Airport (Wilcox Field) Zoning which provided for the maximum allowable height of structures and developable area within the City of Miami. Any proposed future rule changes or implementation of OEI standards should preserve the previously established procedures in obstruction evaluation aeronautical studies as adopted in the Miami-Dade County Zoning. Any departure or changes from the current 2007 zoning rules shall result in the significant forfeiture of the City of Miami development potential and reduced height and square footage of the Downtown. This would result in the following:

1. *Invalidation of current Zoning laws.* The development community and property owners have relied and constructed structures via the 2007 established regulations/criteria, any changes that result in shall essentially “halt” any and all new future development within the downtown.
2. *Taking of property without just compensation.* The inability to develop properties to the allowable 2007 Zoning Ordinance heights may result in the “taking” of a landowner's property without just compensation.
3. *Eradicate the ability to reconstruct and redevelop existing properties.* Existing properties may not be able to be rebuilt to the same height or scale should substantial reconstruction or redevelopment be required. Existing properties should be “grandfathered-in.” Despite the FAA's conveyance of a “no hazard” determination on existing property, it would likely become known that the building may exceed the more restrictive heights in the OEI criteria to property owners, risk managers, and investors in a building. The FAA's formal determinations of “no hazard” expire after 18 months if construction on a project has begun. If a proposed development has received a determination of “no hazard,” the developer has 18 months to begin construction, which in recent years is difficult due to the challenging atmosphere for capital investment and

financing, and further complicated by foreclosure proceedings and litigation related to property proposed for development. Should delays to the start of construction occur, a developer must seek an extension after the initial 18-month period has expired. The FAA evaluates the extension request under the facts and circumstances existing at the time, taking into account current criteria and air traffic procedures. Under a new criteria, a project that had previously received a determination of “no hazard” could now receive a hazard determination upon request for the extension if its proposed height exceeded the OEI criteria.

4. *Compromise the City of Miami Iconic Form.* Many of the City of Miami properties have iconic and cultural significance locally, county-wide, state-wide, nationally and internationally beyond their real estate value or public utility. The City skyline is a part of that city’s national and international visual identity. Renowned international architects have designed existing and proposed iconic buildings in the Downtown to include the following (measured at GSL): Southeast Financial Center (764 feet); Miami Tower (625 feet); Four Seasons Hotel (789 feet); Icon at Brickell (586 feet); One Brickell City Center (1,102 feet); and, One Biscayne Plaza (1,010 feet). Should maintenance or reinvestment in these structures deteriorate over time, causing them to look different or require reconstruction or modification, the skyline of a City shall change. The structures affected include office buildings, residential towers, hotels, mixed use developments, utility and communications towers, and other types of structures.
5. *Implementation of reduced height shall limit density in the Downtown and sanction urban sprawl.* Limiting density in the Downtown shall drive development outward, encouraging sprawl, and limiting the amount of Downtown space available in core employment, residential, and tourism areas. The change would result in limits being placed on the density and development potential of a Downtown area or residential district versus what the market would otherwise have allowed. Reduced heights are counter to sustainable development principles of building “up” versus “out.”
6. *Compromise existing/established neighborhood compatibility.* Where there may be a number of these structures in one location, the very look and feel of that location or neighborhood shall change and affect the value of nearby properties that themselves are not restricted by the policy.

B. *Economic climate uncertainty.*

The adoption of OEI procedures Part 77 determinations will profoundly impact development and existing structures in the Downtown. The jobs, tax revenues, and economic development that go along with these buildings would be lost, at a time when local economies nationwide are still struggling. Consequently, it is essential that developers that will be negatively impacted by the proposal submit comments via a formal rule making process to ensure that the extent of such impacts are fully considered. New proposed developments face significant obstacles in being capitalized with equity and debt. Unless and until the new policy is adopted, a climate of uncertainty would overshadow any prospective investment deal on property subject to the height limitations, which is likely to delay projects that are presently proposed or permitted, but that have not yet begun construction. The estimated 50% reduction in buildable heights in Downtown would limit the office market in continuing to expand in terms of new business and additional employees. Our calculations indicate that the proposed reductions would, over time, cost Miami-Dade County an estimated

260,000 jobs and an annual impact of \$105B of economic output (in 2013 dollars)².

- C. *Before taking any action incorporating OEI standards in Part 77 evaluations, the FAA must initiate a formal rulemaking proceeding to ensure a public and open process that will incorporate comments by all affected stakeholders.*

Any changes to Part 77 to take OEI into account must be a public and open process, incorporate comments by all affected stakeholders, and include a full cost-benefit analysis. Changes to Part 77 process should be subject to legislative-type rulemaking, subject to notice-and-comment under the Administrative Procedure Act (“APA”) with a full Office of Management and Budget (“OMB”) cost-benefit and federalism analysis under Executive Order (“EO”) 12866. Initiating a rulemaking proceeding would allow all potentially affected entities, including developers, local governments, and communities near airports, to express their views, present facts, and raise questions that may not have been considered in the FAA’s development of the OEI Proposal. Such a rulemaking proceeding would allow for greater flow of information between interested parties and facilitate the FAA’s ability to make a reasoned decision, serving the public interest. The adoption of the OEI proposal would essentially promulgate new federal standards regarding land use development near airports and have a substantial direct effect on states and local communities; the FAA is obligated to consult state and local officials as to the appropriateness and need of such standards.

Attachments/Sources:

- A. *Greater Downtown Miami Real Estate Market Annual Summary Report, Downtown Development Authority District and Adjacent Areas of Influence*, Prepared for the DDA, Focus Real Estate Advisors, Craig A. Werley, CRE, FRICS, June 2013.
- B. *Decade Of Change, Downtown Miami Area, 2001 – 2011, Downtown Development Authority District And Adjacent Areas Of Influence*, Prepared for the DDA, Goodkin consulting Lewis M. Goodkin, CRE, FRICS, MIRM And Focus Real Estate Advisors, Craig A. Werley, CRE, FRIS, April 2012.
- C. *Population & Demographic Profile, Downtown Development Authority District and Adjacent Areas of Influence*, Prepared for the DDA, Goodkin Consulting Lewis M. Goodkin, CRE, FRICS, MIRM and Focus Real Estate Advisors, Craig A. Werley, CRE, FRIS, September 2011.
- D. *High-Rise Office Towers - Cost Model*, Davis L., Everest, May 1997.
- E. *Office Market Report*, Prepared for the DDA, Lambert Advisory, May 2014.
- F. *The Economic Impact of Downtown Miami*, Prepared for the DDA, REMI, August 2013.
- G. Miami-Dade County, Code of Ordinances, Part III – Code of Ordinances, Chapter 33, Article XXXVII, Miami International Airport (Wilcox Field) Zoning, established in 2007.

² Assumes 1. complete development in downtown Miami allowed under the Miami 21 zoning code (less right-of-ways); 2. 25% of gross square footage allowed for core and structures; 3. 25% of rentable area allotted for parking; 4. 235 sq. ft. of RBA per employee as is normal in Miami office market; 5. The mix of private sector jobs in downtown will continue into the future with the largest economic drivers coming from Professional & technical services and Banking and Finance.