

June 9, 2014

The Hon. Bill Shuster
Chairman
Committee on Transportation
and Infrastructure
U.S. House of Representatives
2165 RHOB
Washington, DC 20515

The Hon. Nick Rahall
Ranking Member
Committee on Transportation
and Infrastructure
U.S. House of Representatives
2163 RHOB
Washington, DC 20515

The Hon. Frank LoBiondo
Chair
Subcommittee on Aviation
U.S. House of Representatives
2427 RHOB
Washington, DC 20515

The Hon. Rick Larsen
Ranking Member
Subcommittee on Aviation
U.S. House of Representatives
2113 RHOB
Washington, DC 20515

**Re: Support for H.R. 4623, Requiring Federal Aviation Administration to
Conduct Notice and Comment Rulemaking**

Dear Chairmen and Ranking Members:

The undersigned organizations, representing the U.S. commercial, residential, hospitality, industrial, retail and other sectors of real estate, urge swift action on and passage of H.R. 4623. Representatives Moran, Cohen, Salmon, Schweikert and Wilson co-sponsor this bipartisan bill. It would require the Federal Aviation Administration (FAA) to follow ordinary notice and comment procedures that apply to any agency rulemaking – here in the context of a rule change regarding navigable airspace.

Through an April 28, 2014 Federal Register notice, the FAA has proposed to change its regulatory criteria at 14 CFR part 77 (“Part 77”) for determining potential hazards to navigable airspace. Specifically, the FAA plans to integrate separate requirements for air carrier operators when one engine fails during takeoff (one engine inoperative, or “OEI” procedures), within its Part 77 analysis. The FAA’s notice acknowledges that a Part 77 hazard determination has, historically, only considered aircraft operations under normal circumstances. OEI emergency procedures have never before been considered in the Part 77 analysis. But now, by proposing to integrate OEI requirements within Part 77, the FAA signals a significant switch in longstanding agency practices – without all of the safeguards required by the Administrative Procedure Act (“APA”) that must govern any change in federal regulatory conduct.

Our paramount concerns are the safety of airline passengers, building occupants, and neighborhoods near airports. As the FAA recognizes, a Part 77 hazard determination also has a major impact on the decisions of zoning authorities and private insurers that permit and underwrite building and construction projects, communication towers, renewable energy facilities, and other structures attendant to land development near our nation’s airports. The FAA’s proposed rule change thus warrants careful consideration regarding public safety, economic, environmental, local land use planning, regional transportation planning, and other factors. With so many compelling concerns at stake, the FAA should develop an administrative record that satisfies the APA to explain the ultimate facts found and justify any final regulatory

choices made by the agency, and fully account for both the benefits and burdens caused by the rule change.

Moreover, incorporating OEI procedures into Part 77 qualifies as a “significant regulatory action” within the purview of Executive Order 12866 issued by President Clinton, as supplemented by President Obama. Accordingly, the Office of Information and Regulatory Affairs (“OIRA”) within the White House Office of Management and Budget should be given the opportunity to coordinate with the FAA and affected stakeholders to better quantify the costs and benefits of, and assess feasible alternatives to, the proposed action that would incorporate OEI procedures into Part 77 analyses.

We support H.R. 4623 because it compels a fuller and more robust consideration of changing the FAA’s traditional analysis regarding potential obstructions to navigable airspace. We look forward to working with you, the Committee, the bill’s sponsors, the FAA, and OIRA to ensure that all appropriate considerations are analyzed to ensure safe air passage for our nation’s citizens while allowing responsible economic development and land use planning near our nation’s airports.

American Hotel & Lodging Association

American Resort Development Association

Building Owners and Managers Association International

CCIM Institute

Institute of Real Estate Management

International Council of Shopping Centers

NAIOP, the Commercial Real Estate Development Association

National Apartment Association

National Association of Home Builders

National Association of Real Estate Investment Trusts

National Association of REALTORS®

National Multifamily Housing Council

The Real Estate Roundtable

cc: The Honorable James Moran
The Honorable Steve Cohen
The Honorable Matt Salmon
The Honorable David Schweikert
The Honorable Frederica Wilson