Memorandum

To: Director, FAA Office of General Aviation Affairs

From: Jason Henbest and Chad Lallemand

Cc: Dr. Tom Taylor, Florida Conflict Resolution Consortium

Date: August 2, 2004

Re: Disputed Closures of General Aviation Airports

A general aviation airport facing the threat of closure is now a common occurrence all across the country. And the various methods government entities have sought to resolve these disputes have often lead to the situation spiraling out of control. Public resentment swells, parties on opposite sides of the issue begin to organize, protest, and lobby, and instead of making strong decisions based on input gained through a collaborative process that addresses the interests of all stakeholders, the governmental entity charged with making the decision often looks for the easy way out. The chaotic nature of the unstructured process combined with an imprudent decision by the government entity creates rifts among interested persons, destroys relationships, wastes resources, and brings about solutions that are ultimately unsustainable. In addition, the airport often finds itself fighting off another attempt at closure before the previous one has completely subsided.

With that gloom current state of affairs as a backdrop, you have asked us to develop a role for the FAA in a dispute resolution process that will bring about more consistent and lasting answers to the tough questions that face the governmental bodies considering the future of their local general aviation airport. After considering a myriad of options, we present the attached proposal. To meet the needs expressed by your request, we propose a collaborative decision-making and dispute-resolving process sponsored by the FAA but carried out by independent consultants. The proposal would allow either the decision-making governmental body or any group or individual that collects the requisite number of signatures to reach out to the FAA for assistance and guidance. The FAA will provide, after some initial assessments and consensual agreements, a general and standard procedure to build a collaborative process to address the future of the general aviation airport in question. Beyond this role, the FAA will be limited to broadly overseeing and funding the cost of facilitators selected for the project.

We hope that you will seriously consider this proposal to improve the means by which disputes over the closure of general aviation airports are resolved. Should you have any questions or concerns about the materials we are providing herein, please feel free to contact us.
Dispute Resolution Procedure: Attempted Closures of General Aviation Airports

Purpose

General aviation airports enjoy a historic place in our society. However, some people feel that their proper place is in the past, believing that they have outlived their usefulness. Through a cyclical pattern, many of the nation’s general aviation airports face challenges and attempts at closure. In hopes of achieving a uniform means to address these attempts at closure and reach collaborative, sustainable decisions regarding the future of airports facing such challenges, this procedure will provide the FAA, one of the primary governmental entities with decision-making authority regarding general aviation airports and the main source of grant funds that allow many of the airports to operate, with a role in the process and with a structured framework for exercising that role.

Objectives

1) To create a procedure where the FAA can exercise some measure of control over the attempts at closure of the many local general aviation airports across the country.
2) To promote collaborative decision-making with regard to the future of general aviation airports.
3) To provide those opposing attempts to close a general aviation airport with a resource for mediating the dispute and finding a sustainable solution that addresses the interests of all stakeholders.
4) To enhance efficient and effective use of FAA funds and services for general aviation airports.

Procedure

(Read below and reference attached diagram.)

I. Petition for Assistance/Guidance
   A. When a proposal is made to close a general aviation airport in favor of other land uses or to eliminate the expenses imposed by that airport on the overseeing governmental entity, a petition requesting mediation can be filed with the FAA.
   B. The petition will be comprised of a form including a series of questions regarding the attempt at closure and the parties involved.
   C. Attached to the petition must be one of two forms of supporting documentation:
      1. The governmental entity responsible for making the primary decision on the attempt at closure (e.g., state agency, local governing council, etc.) can support a petition by passing a resolution.
      OR
2. A person or non-governmental group interested in the future of the airport can support a petition by providing a number of signatures supporting a common statement of purpose. The total number of signatures must equal 1% of the population either of the municipality where the airport is located if the governing council of that municipality holds the primary decision-making authority or of the county where the airport is located.

D. The petition must name an individual as the “petitioner” who will act as the primary point of contact between the petitioners and the FAA.

II. Initial Determination of Fitness for the FAA Dispute Resolution Process
   A. The petition and supporting documentation will be received by the Office of General Aviation Affairs and will undergo an initial determination of whether the petition meets all of the qualifications on its face.
   B. The Director of the Office, or his/her designee, will review each petition to ensure that all requested information has been provided and that the required supporting documentation is attached.
   C. If any information is missing, the Director, or his/her designee, will send a letter explaining the deficiency to the named petitioner along with a brochure explaining in detail all requirements for the petition.
      1. A second petition correcting the deficiencies of the first can be filed within one month of the date on the letter. Past that time, the procedure must be started anew.
   D. If all information is present, the Director or his/her designee will send a letter to the petitioner informing him/her that the petition has passed this initial step and will moving forward in the procedure. Another letter will be sent to the decision-making governmental entity to inform its members that the FAA is looking at the situation and considering taking on a role; hopefully, this will provide the opening for FAA and, at least, will slow the entity’s decision until the FAA procedure can be completed.
   E. Since many of these disputes may progress quickly, it is important that this step be completed as quickly as possible. The determination should be made within one week of reception of the petition.

III. FAA Situation Assessment
   A. The Director, or his/her designee, will assign the petition to a Dispute Resolution Specialist in the Office on General Aviation Affairs immediately following the initial determination.
   B. The Specialist will be responsible for conducting a situation assessment and writing a report of approximately four pages that will be presented to the Committee on General Aviation Airport Closures.
      1. The report should include such information as a brief history of the dispute, the stakeholders in the airport and the players in the dispute, the names of members of the governmental entity ultimately responsible for deciding whether the attempt at closure will be successful, etc. This write-up should resemble a brief, outline-form case study of all pertinent information.
   C. The Specialist receiving an assignment will be based on availability, location of the dispute in relation to the Specialist, and other expedient considerations.
1. It may prove useful to assign geographical areas to particular Specialists or developing some other form of division of labor.

D. The assessment must be completed within two weeks of the Director, or his/her designee, making the assignment unless the Director himself/herself approves a longer time frame based on workflow considerations (e.g., an inordinately high volume of petitions or a lack of qualified personnel).

IV. Final Decision of Sponsorship
   A. The situation assessments will be brought before the Committee within one week of completion.
   B. The Committee will be comprised of all Specialists within the Office who are charged with conducting and writing the situation assessments.
   C. Each Specialist will have one vote as to whether the Office should sponsor an independent mediation of the petitioned dispute; however, the Specialist who conducted and wrote the situation assessment will not vote on that petition.
   D. A simple majority of the Committee is sufficient to approve or disapprove of sponsorship.
   E. As Specialists will have varying availability to meet, provisions will be made with regard to each meeting to allow for teleconferencing as well as voting via e-mail.

V. Selection of Facilitator
   A. The FAA will maintain a list of mediators suitable for handling the types of issues that often arise in a dispute over an attempted closure of a general aviation airport.
   B. A queue of available mediators will be updated prior to each meeting of the Committee, and the name/s of the assigned mediators will be selected from that queue immediately following the Committee’s decision of sponsorship based on the availability and familiarity with the airport, area, and local government.

VI. Ongoing Guidance
   A. The Office will provide support to the selected mediator on an as-available and as-requested basis.
      1. Special attention and consideration will be given to any requests to have the Office step in and speak with the decision-making governmental entity to ensure to the extent possible that the mediator has every opportunity to bring about a successful and sustainable resolution to the dispute.
   B. Additionally, the Office will receive monthly written progress reports from the mediator to ensure that the efforts are achieving at least a modicum of success.
   C. The Office should also stay in contact with any FAA officials involved in the actual dispute resolution process to ensure that the process implemented by the mediator is succeeding.
   D. If any problems are identified at any point in the process, additional contacts may be had with the mediator.

VII. Appeals of Initial Determinations and Final Decisions
A. If the petitioner feels that his/her petition has been wrongly rejected as facially inadequate during the initial determination phase, s/he can send a letter to the Committee requesting that a situation assessment be ordered and ultimately voted on.
   1. Such relief should be granted only when expediency demands such and only in extreme cases. The facial requirements are minimal, the petitioner has an opportunity to submit a revised petition correcting any facial deficiencies, and the initial determination is intended to filter clearly deficient petitions.

B. If the petitioner feels that his/her petition has been wrongly denied sponsorship by the Committee, the petitioner can request the Committee’s reconsideration and/or file a grievance with a Grievance Hearing Committee (GHC).
   1. The Committee will only reconsider a decision if the Committee member who conducted the situation assessment disagrees with the decision the Committee reached. The Committee would then be reconvened and the assessment would be reconsidered as if it had never been brought before the Committee previously (i.e., the same criteria and guidelines would apply).
   2. The GHC, comprised of the Director of the Office, the Director of the FAA, and the General Counsel of the FAA, will review grievances to decide if the Committee’s decision was arbitrary and capricious.

## Procedure Management

I. Roles and Responsibilities
   A. Petitioners
      1. This individual will be the primary point of contact for the Office throughout this procedure.
   B. Director, FAA Office of General Aviation Affairs
      1. Responsible for making, or designating the authority to do so, the initial determinations as to whether the mediation petitions meet the facial requirements.
      2. Serves on the Grievance Hearing Board to decide whether the Committee’s denial of a petition was arbitrary and capricious.
   C. Director, FAA
      1. Serves on the Grievance Hearing Board to decide whether the Committee’s denial of a petition was arbitrary and capricious.
   D. General Counsel, FAA
      1. Serves on the Grievance Hearing Board to decide whether the Committee’s denial of a petition was arbitrary and capricious.
   E. Specialist, FAA Office of General Aviation Affairs
      1. Conduct and write up the situation assessments for all disputes that make it past the initial determination.
      2. Serve on the Committee on General Aviation Airport Closures.
   F. Committee on General Aviation Airport Closures
      1. Decides whether the FAA should sponsor the mediation of the dispute.
      2. Handles appeals from the Director’s, or his/her designee’s, initial determination of compliance with the facial requirements.
   G. Independent Facilitators
1. Develop and implement situation-specific process designs to resolve disputes involving attempts to close a general aviation airport.
2. Provide progress reports back to the Office on a monthly basis, and communicate any other needs or problems that the Office may be able to help resolve, especially those involving the decision-making governmental entity.

H. FAA Representative
   1. Represents FAA interests in the mediation
   2. Coordinate FAA expert input

**Institutionalization**

I. Provisions to Enhance Acceptance by Decision-Makers and Participants
   A. Adoption of this proposal will grant far more control and decision-making capacity in the hands of the FAA for resolving disputes regarding airports funded and administered by the FAA
   B. Standardization and structured nature of the process minimizes undesirable and/or unanticipated outcomes.
   C. The process has inherent qualities that promote collaboration and agreements reached by consensus. These qualities greatly improve sustainability of solutions.
   D. Applying this process will minimize negative public backlash directed at the FAA or government entities that may occur in the case that alternative processes are adopted to reach a solution.
   E. The process employs skilled dispute facilitators who bring with them past experience in successfully dealing with attempts at airport closure.
   F. The process has designed avenues for appeal and/or reconsideration of previous decisions.
   G. The process will improve and enhance the relationship of the FAA with various governmental bodies, public interest groups, and/or individuals that have interest in general aviation airports.
   H. Overall reputation of the FAA as a positive organization that reaches out to the community to build collaborative agreements will be enhanced, and this positive reputation will benefit the FAA in the event of future suits against the FAA.

II. Preparations and/or Training Necessary for Process Implementation
   A. Staff at the Office will require training, or staff will need to be added and trained, to perform duties and activities as specialists in assessing whether the FAA Dispute Process is designed, appropriate, suited, or can be tailored to be effective for resolving the case specific attempt at closure.
   B. Facilitators assigned to each case will bring with them experience, knowledge, and expertise which he or she will be able to share with stakeholders and participants.
   C. Committee members will need to be trained and/or introduced to the necessary guidelines in formulating the case assessments so that they are beneficial for evaluation and judgment by the overall Committee. Equally, they may require training in composing and/or adopting proper material in effectively designing progress reports.
D. Those appropriated to assume the duties of the Committee may be in need of training at how to work effectively as a Committee in reaching appropriate group decisions. They may need to be introduced to techniques such as group idea generating activities, chartwriting, broad input gathering activities, and/or ways to encourage participation.

E. Those members of the Grievance Hearing Committee will need to be trained and/or introduced to the process as well as the general criteria the Committee will be looking for in making their decision to overturn the Committee’s former decision.
Current Decision-Making Procedure

Proposal to Close Airport → Stakeholders Take up and Argue From Positions

Government Makes a Decision Based on Staff Analysis and Conflicting Information

Proposed Collaborative Decision-Making and Dispute-Resolving Procedure

Proposal to Close Airport → Petition to FAA → Initial/Facial Determination

Selection of Facilitator → Decision of Sponsorship → Situation Assessment

Collaborative Resolution → Success! → Appeal to Committee → Letter of Denial

Appeal to GHB → Success!