



# A Hopeful Development: Terminal Replacement at Bob Hope Airport

By Terence Rex Boga

**B**ob Hope Airport (BUR), owned and operated by the Burbank-Glendale-Pasadena Airport Authority (BGPAA), is a 555-acre facility in Southern California. Most of the airport, 455 acres, lies within the City of Burbank's jurisdiction; the remainder is part of the City of Los Angeles. The airport has two intersecting runways, one oriented northwest-southeast and the other oriented west-east. It also has a 14-gate, 232,000-square-foot passenger terminal that, to quote the U.S. Court of Appeals for the Ninth Circuit, is "perilously close" to the latter.<sup>1</sup>

This article recounts how the BGPAA overcame decades of futility and secured the right to build a 14-gate, 355,000-square-foot replacement passenger terminal. The saga is replete with political wrangling by elected officials, courtroom battles between public agencies, and initiative measures enacted by a distrustful citizenry. It is a tale that demonstrates the importance of perseverance and compromise—legal and political—to achieve infrastructure modernization at a key airport in one of the nation's largest metropolitan areas.

## Transition from Private to Public Ownership

### *The Rise and Fall of Lockheed Air Terminal*

Built and originally operated by a predecessor of United Airlines, the facility now known as BUR opened in a predominantly agrarian area in 1930 as United Airport. Four years later, the facility was rechristened Union Air Terminal and, for a time, it was the Los Angeles region's primary hub for intrastate, interstate, and international commercial air carrier flights.

Lockheed Aircraft Corporation bought Union Air Terminal in 1940 and promptly renamed it Lockheed Air Terminal. In addition to continuing to operate the airport, Lockheed established a wartime production and assembly plant, as well as the Skunk Works research and development operation. Military aircraft created on-site by Lockheed include the P-80 jet fighter, the F-104 Starfighter, the U-2 spy plane, the SR-71 Blackbird, and the F-117A stealth tactical fighter.<sup>2</sup>

Lockheed Air Terminal received a new appellation in 1967, Hollywood-Burbank Airport, to satisfy a

request from commercial air carriers seeking a geographic identity for the facility. By then, urbanization had reached the airport and community antipathy was growing. In March 1970, in response to recurring noise complaints, the Burbank City Council adopted a curfew ordinance prohibiting jet aircraft from taking off between 11:00 p.m. and 7:00 a.m. Lockheed and Pacific Southwest Airlines successfully challenged the ordinance in federal court, and the City of Burbank appealed to the U.S. Supreme Court. In 1973, by a 5–4 vote, the Court ruled that the ordinance was preempted by federal statutes.<sup>3</sup>

Lockheed did not savor its victory for long, however. Unable to comply with California's noise standards, ineligible to receive government funding for airport maintenance and construction projects, and facing ongoing exposure to civil litigation, the company made a momentous business decision. In September 1975, Lockheed announced its intent to sell Hollywood-Burbank Airport, preferably but not necessarily to a buyer that would continue operating the facility.

### *What Comes Next?*

Even before Lockheed put the airport on the market, the City of Burbank began studying the feasibility of public ownership. William Rudell, a Princeton University and Yale Law School alumnus elected to the Burbank City Council in 1973, championed the cause for the city. Describing its position in a letter to a law school classmate who was secretary of California's Business and Transportation Agency, Mayor Rudell explained:

The City of Burbank clearly recognizes the importance of the Hollywood-Burbank Airport to our local economy and to the air-traveling public; we likewise recognize the environmental problems associated with the airport, and it is our desire to ensure that present and future operations at the Hollywood-Burbank Airport are conducted in an environmentally acceptable manner.<sup>4</sup>

Although elected officials wished to save the airport, they disagreed about how to achieve this goal. On one side, the Cities of Burbank, Glendale, Pasadena, and San Fernando formed a working group that eventually focused on contractually creating a separate entity—a

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joint powers agency—to purchase and operate the airport pursuant to a state law that authorized public agencies to jointly exercise any common power.<sup>5</sup> A key impediment to this option was money. The anticipated federal assistance was insufficient to reach Lockheed's sale price, and state law only allowed joint powers agencies to issue revenue bonds to finance exhibit halls, sports arenas, and other public buildings.

On the other side, the County of Los Angeles advocated creation of an airport district to purchase and operate the airport. The California Airport District Act authorized counties to form an intercity and inter-county special district for the purpose of developing airports and distributing the cost uniformly among beneficiaries.<sup>6</sup> This approach faced two key impediments: time and uncertainty. Airport district formation required voter approval, and there was no guarantee that the proposition would pass. Nonetheless, in a letter to the Burbank, Glendale, Pasadena, and San Fernando mayors, Los Angeles County Supervisor Baxter Ward argued that an airport district had many advantages:

Such a district requires no additional State legislation, would result in a financially sound governmental entity, and would be a thorough sign to Lockheed that it should slow down its departure preparations to await negotiations for a purchase that would be far more swift than any process that involves placing their present parcel onto today's real estate market.<sup>7</sup>

Over the next month, the Los Angeles County Board of Supervisors passed several minute orders urging creation of an airport district.<sup>8</sup>

The joint powers agency option received a boost on June 24, 1976, when a group of state legislators introduced Senate Bill 1468. As initially drafted, the bill would have allowed all joint powers agencies to issue revenue bonds to pay for a public airport acquisition. However, the amendment process narrowed the authorization to make it applicable only to a joint powers agency in the County of Los Angeles formed to acquire Hollywood-Burbank Airport. Additionally, to address concerns of property owner groups, lawmakers inserted a noise impact area cap and noise mitigation measures. Governor Jerry Brown ignored an opposition letter from the County of Los Angeles and signed the bill on September 13, 1976.

Nine months later, the Cities of Burbank, Glendale, and Pasadena executed a joint powers agreement that created the Hollywood-Burbank Airport Authority. Despite having participated in the working group, the City of San Fernando declined to be a party to the contract. Also conspicuously absent was the City of Los Angeles, which, although not a working group participant, had publicly weighed signing on to the contract.

The joint powers agreement specified that the airport authority would be governed by a nine-member

commission, with each member city appointing three commissioners. Significantly, affirmative votes by four commissioners would be sufficient for most commission decisions. The exceptions were that a majority of each member city's representatives had to approve any decision that authorized a bond issuance, involved payment of surplus revenue, or could result in an increase of the airport's noise impact area. In time, the City of Burbank would come to regret the narrow scope of this supermajority vote requirement.

### *Closing the Deal*

The Hollywood-Burbank Airport Authority and Lockheed executed a March 30, 1978, purchase agreement to transfer the 48-year-old airport to public ownership. The sale price was \$51 million, which was comprised of \$35.3 million in federal grant funds and \$15.7 million in bond proceeds. Fittingly, the airport authority's signatory was President William Rudell, who had resigned from the Burbank City Council to serve as one of Burbank's first three representatives on the new agency.

### **A Relocation Dream Deferred**

#### *Washington on Its Side*

Almost immediately after the ownership transfer, the Cities of Burbank, Glendale, and Pasadena amended their joint powers agreement to rename both the airport authority and the airport. The agency became the BGPAA and the facility became the Burbank-Glendale-Pasadena Airport, with Burbank Airport as the branding shorthand.

Nearly as quickly, the Federal Aviation Administration (FAA) began pushing for relocation of the passenger terminal to improve safety. In January 1980 and November 1982 correspondence, the FAA expressed its "concern with respect to the location of the terminal building which is located within the safety area of Runway 7/25 and penetrates the primary and transition surfaces of FAR Part 77."<sup>9</sup>

Thus, over a 20-month period from 1983 to 1984, the FAA and the BGPAA collaborated on a combined environmental impact statement/environmental impact report (EIS/EIR) for a proposed terminal complex on Lockheed-owned land adjacent to the northeast corner of the airport. The target site was a 41-acre portion of Lockheed's Plant B-6. The proposed terminal was to be an 11-gate, 190,000-square-foot building, which would maintain the then-existing number of gates but

The FAA expressed its "concern with respect to the location of the terminal building."

more than double the size of the then-existing terminal. Although Lockheed had tentatively agreed to the sale, in 1985 it decided to retain the property based on security requirements imposed by its defense contracts.

Two years later, the FAA and the BGPAA started a new EIS/EIR, this time for a split terminal configuration on the airport authority's property. The proposed project involved a 123,000-square-foot landside terminal in the airport's southwest quadrant and an 18-gate, 162,000-square-foot airside terminal in the northwest quadrant. The terminals would be connected by a people-mover system underneath the runway separating the quadrants. The agencies stopped work and abandoned this project, however, due to yet another unanticipated development. In May 1990, Lockheed unexpectedly announced its intent to sell all of its airport-adjacent property and move out of Burbank.

For their next EIS/EIR, the FAA and the BGPAA pursued an even more ambitious project. Most of the new terminal would be constructed on Lockheed's Plant B-6 site in two phases, with a 19-gate, 465,000-square-foot building initially and then a buildout to 27 gates and 670,000 square feet. By comparison, the then-existing terminal was a 14-gate, 163,000-square-foot facility. Despite the substantial size increase, the EIS/EIR characterized the proposed development as a "replacement" rather than an "expansion" project on the premise that a building does not create demand for air travel.

#### *Courtroom Dramas*

Burbank voters reacted to the new project in April 1995 by electing, for the first time, a city council majority that supported strong limits on airport development. The new majority replaced Burbank's airport authority commissioners with appointees who shared that position. This change had little practical impact because the Glendale and Pasadena airport authority commissioners could unite to outvote Burbank's representatives on most decisions. Of greater significance, Burbank's new city council majority adopted a 10-point policy statement regarding the airport and the proposed replacement terminal.<sup>10</sup> This statement included declarations that the city council would not support construction of a new terminal without a mandatory 10:00 p.m. to 7:00 a.m. curfew, that the number of flights must be capped, and that the city's property tax revenue must be preserved against a reduction resulting from the airport authority's acquisition of more land. For good measure, the statement warned that the city council would resist any attempt to circumvent or overrule the city's concerns.

Unsurprisingly, the relationship between the BGPAA and the City of Burbank soured. In December 1995, the city established a 10 percent transient parking tax on fees paid by valet parking patrons and persons who occupy a parking space for less than a calendar month. Perceiving a threat to its operating

income, more than half of which derived from parking fee revenue, the airport authority challenged the tax in state court as preempted by federal law and unconstitutional under the commerce clause. Neither argument persuaded the California Court of Appeal, which upheld the tax.<sup>11</sup> In May 1996, the City of Burbank joined the City of Los Angeles in a federal court challenge to the EIS/EIR for the 27-gate replacement terminal project. Ruling in favor of the FAA and the BGPAA, the Ninth Circuit agreed that airport location, runways, and ticket prices influence passenger levels to a greater degree than how appealing a terminal is or how many gates are operating.<sup>12</sup>

More than any other dispute, however, the battle over California Public Utilities Code (PUC) section 21661.6 determined the balance of power between the BGPAA and the City of Burbank. Added to California's State Aeronautics Act<sup>13</sup> in 1971, PUC section 21661.6 prohibited political subdivisions from acquiring land to expand a publicly owned airport without first having an expansion plan approved by the city council of the city or the board of supervisors of the county where the land was located. The statute further mandated that the acquired land be used in conformance with the approved plan and that any change be approved by the city council or the board of supervisors.

Because the BGPAA had not submitted an expansion plan for approval, the City of Burbank proceeded to evaluate a proposed new airport layout plan as an application under PUC section 21661.6. The BGPAA filed a lawsuit in federal court seeking to block that review and invalidate PUC section 21661.6. This effort failed when the Ninth Circuit ruled that the airport authority, as a political subdivision of the State of California, lacked standing under federal law to challenge the constitutionality of a state statute.<sup>14</sup> For its part, the City of Burbank filed a state court action to enjoin the BGPAA from acquiring or using Lockheed's property for airport expansion without the city's approval. This effort succeeded when the California Court of Appeal upheld the statute against constitutional challenges and an argument that the city had delegated its PUC section 21661.6 review powers through the joint powers agreement that created the airport authority.<sup>15</sup>

#### *One Step Forward, Two Steps Back*

In November 1999, with the City of Burbank's consent, the California superior court entered a final order of condemnation concluding an eminent domain action filed by the BGPAA against Lockheed for the 130-acre Plant B-6 site. The order allowed the BGPAA to take title to 49 acres located next to the airport (the adjacent property). The remaining 81 acres were placed in a trust (the trust property). Concurrently with the title transfers, the City of Burbank recorded an easement prohibiting use of the land for airport expansion without compliance with PUC section

21661.6. Additionally, the trust agreement required that the trust property be sold if the city and the airport authority could not negotiate a development agreement for a replacement terminal.

Yet significant issues threatened to obstruct a solution and the list became even longer. These included long-standing items such as the City of Burbank's desire for a mandatory curfew and compensation for lost tax revenue. Then, in November 2000, Burbank voters approved a city council–proposed initiative measure (commonly known as Measure B due to its ballot designation) that enacted an ordinance requiring voter ratification of any discretionary act by the city relating to a relocated or expanded airport terminal project, including any agreement between the city and the airport authority. Eleven months later, Burbank voters approved a more restrictive initiative measure (Measure A) proposed by a citizens group called Restore Our Airport Rights. In addition to imposing a two-thirds vote threshold for the electorate to ratify city council decisions on an airport terminal project, Measure A prohibited the city council from granting such approvals until the airport authority satisfied 12 conditions, including a mandatory curfew and caps on annual aircraft operations and passengers. The City of Burbank sought judicial review of Measure A, and the California Court of Appeal ultimately invalidated it as preempted by PUC section 21661.6.<sup>16</sup> While that litigation was pending, though, the city enacted a moratorium on development permits for airport improvement projects.<sup>17</sup>

By November 2002, the BGPAA openly despaired over the dim prospects for a replacement passenger terminal. In an update to the FAA, President Chris Holden wrote:

There is now a lengthy litany of factors—a state law requiring City approval for land acquisition; voter sentiment opposing the project unless daytime and nighttime flight restrictions are approved; a voter approval requirement for the terminal relocation project; and a requirement for a new EIR—which, when coupled with the questionable economic status of the airlines, place difficult and perhaps insurmountable obstacles in the path of a terminal relocation at Burbank.<sup>18</sup>

Two years later, the BGPAA sent the FAA an \$11.9 million check as partial repayment of \$41.1 million in federal grant funds used for the acquisition of Lockheed's Plant B-6 site.

## A Lasting Peace

### *The No Terminal Development Agreement*

The BGPAA and the City of Burbank executed a development agreement in March 2005 for the newly renamed Bob Hope Airport,<sup>19</sup> but this was not the one contemplated when the Plant B-6 site acquisition was

completed. As is typical of such contracts, the development agreement granted the airport authority a vested right to build certain improvements in accordance with the city's then-existing zoning regulations. More notable were the prohibitions that it contained. Based on operational, financial, and other factors, the airport authority committed to neither construct nor take steps needed for the construction of a new passenger terminal. In exchange, the city committed to not initiate any planning or rezoning that would affect the location or development of a new passenger terminal.

The cease fire period had the desired effect and, by the time the development agreement expired in March 2015, the agencies were heavily engaged in negotiations for a long-term accord.

### *The Replacement Terminal Development Agreement*

The first meaningful sign that the agencies might finally bridge their differences came in November 2015 when the BGPAA Commission and the Burbank City Council endorsed a conceptual term sheet for a replacement terminal deal. The key provisions stated that the airport authority would receive a vested right to build a 14-gate, 355,000-square-foot replacement passenger terminal anywhere other than on the trust property, and that the city would receive protections against future airport expansion and noise impacts through new supermajority vote requirements in the joint powers agreement. But the term sheet's omissions were as significant as its contents: there was no mention of a flight cap, passenger cap, or compensation to the city for lost tax revenue. Moreover, although the agencies committed to support curfew-authorizing legislation, the term sheet proclaimed that imposition of a mandatory curfew would not be a prerequisite for a replacement terminal.<sup>20</sup>

Negotiations for a replacement terminal deal concluded eight months later. Two documents formed the cornerstone of the deal: (1) a 20-year development agreement between the BGPAA and the City of Burbank, and (2) a joint powers agreement amendment by the Cities of Burbank, Glendale, and Pasadena.

The development agreement would give the airport authority a vested right to build a replacement passenger terminal consistent with the gate and size limits specified in the term sheet. The potential sites were limited to the adjacent property and the airport's southwest quadrant, however, as those were the locations studied in the BGPAA's EIR for the 14-gate, 355,000-square-foot replacement terminal project. The development agreement also addressed numerous issues not covered by the term sheet. These included clarification of permitted uses in the city's airport zone, establishment of a transient parking tax cap that the city would not ask voters to exceed, and acknowledgment that certain airport authority parcels would be grandfathered from land use plan review under PUC section 21661.6.

The joint powers agreement amendment would establish eight new supermajority vote requirements. Among other decisions, these would cover approvals of aircraft gate increases, passenger terminal expansions, land acquisitions, and noise rule changes. Thus, even if all three Glendale and all three Pasadena airport authority commissioners voted in favor of such a matter, two of Burbank's three commissioners would be able to block the action by voting against it.

On July 11, 2016, two months after selecting Hollywood Burbank Airport as the new branding shorthand for BUR, the BGPAA Commission unanimously approved the replacement terminal deal. Three weeks later, by a 4–1 vote, the Burbank City Council approved the deal and called a November 8, 2016, special election for voters to consider ratification of the replacement terminal development agreement, zoning amendments, and a modification to the city's adjacent property easement. This initiative measure also would be known as Measure B, a ballot designation chosen by the city to avoid confusing voters who described the special election as a "Measure B election" in reference to the 2000 measure.

#### *The Election of 2016*

Burbank voters received a ballot pamphlet containing arguments for and against Measure B, as well as an impartial analysis. The argument in favor (signed by the mayor, vice-mayor, two council members, and a community activist) urged approval of the measure so that residents would gain protections against future changes at the airport and a safer passenger terminal with more amenities. The argument against (signed by one council member) disputed that the deal offered protections and urged rejection of the measure to retain airport accountability, transparency, and oversight. Burbank City Attorney Amy Albano's impartial analysis explained that a "yes" vote "continues an era of cooperation" and that a "no" vote could lead to a situation in which "conflicts might arise again" between the city and the airport authority.

More than 42,000 ballots were cast at the Measure B election. Seventy percent of Burbank voters approved ratification of the replacement terminal deal, a remarkable turnaround from the 58 percent approval of Measure A 15 years earlier.

#### **Conclusion**

Many factors contributed to the BGPAA's near 40-year inability to improve safety at BUR by building a replacement passenger terminal. The list certainly would include bad luck with respect to Lockheed's land sale decisions and overreaching with respect to the 27-gate terminal proposal. And yet, the agency and the facility undeniably are better positioned because of the

long road to a solution. The supermajority vote requirements added to the joint powers agreement ensure that airport expansion and noise impact decisions by the BGPAA Commission reflect a consensus of the representatives of all three member cities. The overwhelming passage of Measure B in November 2016 confirms that the airport enjoys strong community support. In short, the future of BUR is hopeful indeed.

#### **Endnotes**

1. *City of Los Angeles v. FAA*, 138 F.3d 806, 807 (9th Cir. 1998).
2. BEN R. RICH & LEO JANOS, *SKUNK WORKS: A PERSONAL MEMOIR OF MY YEARS AT LOCKHEED* (1994).
3. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973).
4. Letter from William B. Rudell, Mayor, City of Burbank, to Donald E. Burns, Sec'y, Cal. Bus. & Transp. Agency (Nov. 26, 1975) (on file with author).
5. CAL. GOV'T CODE §§ 6500 *et seq.*
6. CAL. PUB. UTIL. CODE §§ 22001 *et seq.*
7. Letter from Baxter Ward, Supervisor, County of Los Angeles, to Mayors of Burbank, Glendale, Pasadena & San Fernando (July 2, 1976) (on file with author).
8. See the Los Angeles County Board of Supervisors meeting minutes for July 6, 1976, and August 3, 1976.
9. Letter from Robert C. Bloom, Manager, FAA S. Airports Field Office, to Russell C. Widmar, Dir., Airport Servs., Burbank-Glendale-Pasadena Airport Auth. (Nov. 3, 1982) (on file with author).
10. Burbank, Cal., City Council Resolution No. 24,578 (Sept. 19, 1995).
11. Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 76 Cal. Rptr. 2d 297 (Ct. App. 1998).
12. *City of Los Angeles v. FAA*, 138 F.3d 806, 807–08 (9th Cir. 1998).
13. CAL. PUB. UTIL. CODE §§ 21001 *et seq.*
14. Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360 (9th Cir. 1998).
15. *City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.*, 85 Cal. Rptr. 2d 28 (Ct. App. 1999).
16. *City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.*, 6 Cal. Rptr. 3d 367 (Ct. App. 2003).
17. Burbank, Cal., Ordinance No. 3601 (Aug. 20, 2002).
18. Letter from Chris Holden, President, Burbank-Glendale-Pasadena Airport Auth., to Marion C. Blakey, Adm'r, FAA (Nov. 4, 2002) (on file with author).
19. The Cities of Burbank, Glendale, and Pasadena amended their joint powers agreement in November 2003 to rename the airport in honor of the iconic entertainer.
20. In 2009, the BGPAA unsuccessfully applied to the FAA for authorization under the Airport Noise and Capacity Act of 1990 and 14 C.F.R. part 161 to implement a mandatory 10:00 p.m. to 6:59 a.m. curfew on aircraft operations.