

## SUBCHAPTER 4. OBSTRUCTION ORDINANCE STANDARDS

### 16:62-4.1 Minimum obstruction ordinance standards

(a) This subchapter defines the minimum obstruction ordinance standards which a municipality must enact pursuant to the provisions of this chapter, and describes the methodology used to define vertical development allowed within an Airport Safety Zone.

(b) Notwithstanding the provisions of this chapter, the primary regulation of airport development, airport property use, internal dimensional criteria, and vertical development on airports is accomplished within N.J.A.C. 16:54.

Amended by R.1995 d.76, effective February 6, 1995.  
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

### 16:62-4.2 Methodology used to define vertical development allowed within an Airport Safety Zone

(a) Minimum obstruction ordinance standards establish the vertical limits up to which structures or trees may be allowed to be developed or grow.

(b) Minimum obstruction ordinance standards are vertical standards measured in respect to elevations whose datum is the horizontal plane established by runway elevations. For example, if a point in an Airport Safety Zone permits at a specific point development up to "X" feet, that means "X" feet above the runway horizontal plane and not "X" feet above the natural grade of the land at that point in the Airport Safety Zone. This provision is further graphically depicted in Figure 4.

(c) The vertical standards within the RUNWAY SUBZONE of an Airport Safety Zone are determined first by establishing the elevations at the runway centerlines at the ends of the RUNWAY SUBZONE. From those elevations at the RUNWAY SUBZONE ends, a line is run 90 degrees outward from each side of the runway centerline for a distance of 125 feet. Within the area defined by these four points, no development is allowed above the natural grade of the soil except for runway and flight safety equipment.

1. The vertical standards within the remainder of the RUNWAY SUBZONE of an Airport Safety Zone are determined by establishing planes from the edges of the longitudinal 0 foot development restriction line established in N.J.A.C. 16:62-4.2c which slope upward and outward at a rate of seven feet horizontally to one foot vertically. This upward plane ceases when it reaches the outer longitudinal borders of the RUNWAY SUBZONE of any Airport Safety Zone at the elevation of 150 feet above its starting point at the longitudinal zero foot development line.

2. The methodology used to establish the vertical standards within the RUNWAY SUBZONE of an Air-

port Safety Zone is further graphically depicted in Figure 5.

(d) The vertical standards within the RUNWAY ENDS SUBZONE of an Airport Safety Zone are determined by first establishing a plane with a rising slope of one foot upward to 20 feet outward from the end of the RUNWAY SUBZONE to the outermost end of the RUNWAY END SUBZONE. This plane is bisected by the extended runway centerline and is 250 feet in total width at its innermost dimension and widens uniformly along its 3,000 feet length so as to have a total width of 850 feet at its outermost dimension where it intersects with the outermost portion of the RUNWAY END SUBZONE at the elevation of 150 feet above its starting point at the zero foot development line.

1. The vertical standards within the remainder of the RUNWAY END SUBZONE of an Airport Safety Zone are determined by establishing sloping planes from the outermost longitudinal edges of the plane established in (d) above. These planes rise upward at a rate of one foot upward to seven feet outward from the plane established in (d) above to where they meet the outermost longitudinal boundaries of the RUNWAY END SUBZONE at the elevation of 150 feet.

i. The methodology used to establish the vertical standards with the RUNWAY END SUBZONE of an Airport Safety Zone is further graphically depicted in Figure 6.

Amended by R.1995 d.76, effective February 6, 1995.  
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

## SUBCHAPTER 5. LAND USE ORDINANCE STANDARDS

### 16:62-5.1 Minimum land use standards

(a) Within the safety zones delineated in N.J.A.C. 16:62-3.1, each municipality shall implement under N.J.A.C. 16:62-2.1, ordinances which implement the following standards for land use around airports. Prohibited land uses are specifically prohibited without the written approval of the Commissioner. Prohibited land uses may be allowed by the Commissioner on airport property when they are determined necessary by the Director for air commerce purposes or for the operation of the airport and its vendors directly serving air commerce needs. An example of this is a flight school.

1. Permitted land uses:

i. Residential-single family dwelling units which are situated on a lot at least three acres in size and not located in a CLEAR ZONE. Residential zoning is permitted in the CLEAR ZONE as long as all dwell-

ings are physically located outside of the CLEAR ZONE;

- ii. Airpark (minimum lot size of at least three acres which are not located in a CLEAR ZONE);
- iii. Open space;
- iv. Agricultural;
- v. Transportation;
- vi. Airport;
- vii. Commercial (not located in a CLEAR ZONE);
- viii. Industrial (not located in a CLEAR ZONE);

2. Specifically prohibited land uses:

- i. Residential (dwelling units) not situated on a lot of at least three acres in size;
- ii. Planned unit developments and multifamily dwellings;
- iii. Hospitals;
- iv. Schools;
- v. Above ground bulk tank storage of compressed flammable or compressed toxic gases and liquids;
- vi. Within the RUNWAY END SUBZONES only, the above ground bulk tank storage of flammable or toxic gases and liquids;
- vii. Uses that may attract massing birds, including land fills;
- viii. Above grade major utility transmission lines and/or mains.

(b) Subject to review by the Director, a municipality may implement land uses substantially similar to those listed as permitted land uses in (a)1i-vi above as long as they are in accord with the intents of this chapter as determined by the Commissioner. A municipality may not, however, implement a land use ordinance or plan which may have the effect of allowing or promoting the establishment of specifically prohibited land uses as determined by the Commissioner. A municipality further may not implement ordinances which would have the effect of preventing routine improvement of an aeronautical facility or airport within the area zoned under this chapter.

(c) Municipalities shall, when developing land use ordinances to conform with the provisions of this chapter, adopt general land use provisions within the ordinance to minimize unwarranted concentrations of persons within Airport Safety Zones, especially along the extended runway centerlines within RUNWAY END SUBZONES.

Amended by R.1985 d.537, effective November 4, 1985.  
See: 17 N.J.R. 1869(a), 17 N.J.R. 2673(b).

(c) added.  
Amended by R.1989 d.242, effective May 15, 1989.

See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

In (a)1i: Deleted "Industrial" and added new language regarding residential-single family dwelling units and permitted land uses. In (a)1ii: Deleted "Commercial" and added new language describing "Airpark." Added new (a)1vii and viii. In (a)2i: Added language specifying lot size requirement for residential (dwelling units). Amended by R.1995 d.76, effective February 6, 1995.  
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

Case Notes

Air Safety and Zoning Act of 1983 was not unconstitutional. *Patzau v. New Jersey Dept. of Transp.*, 271 N.J.Super. 294, 638 A.2d 866 (A.D.1994), certification denied 138 N.J. 268, 649 A.2d 1288.

SUBCHAPTER 6. PERMIT FOR CREATION OR EXPANSION OF A PROHIBITED LAND USE OR VERTICAL HEIGHT DEVELOPMENT WITHIN AN AIRPORT SAFETY ZONE

16:62-6.1 General provisions

(a) The Commissioner may issue a permit for creation or establishment of a nonconforming use or vertical height development within an airport safety zone upon determination that:

1. An application in conformance with the provisions of this section has been properly submitted;
2. A conditional development approval has been granted by the appropriate municipal agency, if required;
3. The creation of the prohibited land use or vertical height development will not in fact create an additional airport hazard limiting the size of the area available for landing, taking-off and maneuvering of aircraft; and
4. Creation or establishment of the prohibited land use or vertical height development will not harm the public health, safety and welfare.

(b) No person may commence the construction or development of any structure, land use, or condition which is contrary to the standards of this chapter without a valid permit issued by the Commissioner.

(c) In considering an application for a permit, the Director may confer with and seek additional information from the applicant or any other interested party, agency, or governmental organization.

(d) In the review of an application, the Department may take into consideration any factor relevant to the hardship demonstrated by the applicant and any information relevant to the public health, safety and welfare.

Amended by R.1995 d.76, effective February 6, 1995.  
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

### 16:62-6.2 Municipal approval

(a) A developer of a project requiring creation or establishment of a prohibited land use or vertical height development shall first apply for development approval from the appropriate municipal agency. If the municipal agency approves of the development, that approval shall be conditioned on the developer applying for and receiving a permit from the Commissioner in accordance with this section. Construction, development or creation of any prohibited land use shall not commence until a permit has been issued by the Commissioner.

(b) An application for a permit will only be considered by the Department if accompanied by a letter from the municipality requesting the permit.

(c) Any person proposing to create or establish a prohibited land use or vertical height development in a designated airport safety zone not subject to municipal ordinances established in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D), shall present the proposed development to the municipal governing body, which shall be considered the municipal agency for purposes of these rules.

Amended by R.1995 d.76, effective February 6, 1995.  
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

### 16:62-6.3 Permit application requirements

(a) To be considered complete, an application for a permit for creation of a prohibited land use or vertical height development within an airport safety zone must include the following:

1. A completed permit application form;
2. A letter requesting issuance of a permit by the Department from the municipal agency having jurisdiction over the development, together with a copy of the conditional approval for development granted by the municipal agency, if required;
3. A detailed statement of the hardship condition necessitating the application for variance or relief, and a showing that the public health, safety and welfare will not be harmed by the creation of the prohibited land use or vertical height development;
4. Certification that the applicable airport owner(s) or authority were notified of the permit application by registered mail;
5. Submission of a non-refundable \$75.00 permit application fee;
6. Submission of site plans, specifications and construction drawings detailing the substance of the proposed development for which a permit is sought. Site plans shall bear the raised seal of a New Jersey licensed Professional Engineer, Professional Planner, Land Surveyor, or

Architect, as appropriate, and shall show the location of property lines, the location of runways, the boundaries of the airport safety zone, and elevations of proposed development showing where and by what amount the development exceeds the minimum standards for vertical development adopted under this chapter; and

7. Any other material deemed necessary to the permit application by the Director.

(b) Applications for permits issued under the provisions of this chapter and correspondence to the Department relating to the provisions of this chapter should be forwarded to the following address:

New Jersey Department of Transportation  
Division of Aeronautics  
Air Safety and Zoning Permits  
1035 Parkway Avenue  
CN 610  
Trenton, New Jersey 08625

Amended by R.1995 d.76, effective February 6, 1995.  
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

### 16:62-6.4 Permit review procedures

(a) For routine applications, review of an application shall be completed by the Division within 90 days of the date on which an application is accepted as complete.

(b) Non-routine cases, requiring the review or approval of a Federal agency or another State agency prior to issuance of a permit, shall be conducted in as timely a fashion as possible. The Director shall notify the applicant of a delay in the review process necessitated by another agency's involvement. The notification shall be provided prior to 80 days following the date of acceptance of a complete application, and shall include an estimate of the date by which a completion of the review process can be anticipated.

(c) For routine cases not requiring review by other agencies, the Division may, at its discretion, extend the 90-day review period by 30 days if determined necessary to complete the review process. The applicant and affected municipality shall be notified of this extension by the Department at least 15 days prior to the expiration of the 90-day period.

(d) Following review of an application by the Division, the Director shall determine whether to recommend to the Commissioner that the permit be granted or denied.

(e) If the Director recommends denial, the applicant and municipal agency will be notified within five working days of the date of decision. An applicant who has been so notified by the Director may request an appeal before the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1. The applicant shall notify the Division by certified mail within 14 calendar days of notification of

denial that an appeal will be forwarded to the Office of Administrative Law.

(f) Pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 16:62-3, a final determination to either deny or grant the permit application will be made by the Commissioner subsequent to the filing of an Initial Decision by the Administrative Law Judge who conducted the hearing.

#### 16:62-6.5 Permit application decisions

(a) The Commissioner may take one of the following actions:

1. Approve the application as submitted. The applicant will receive a permit which shall be effective during the same period as the development approval granted by the municipal agency. The Department will mail a copy of the permit to the applicant and municipal agency within five working days of the date of approval.
2. Deny the application. The Department will mail a copy of the permit denial to the applicant and municipal agency within five working days of the date of decision.
3. Phased or partial approval. Where conditions warrant, the Commissioner may provide for a phased approval of an application. The Commissioner may also approve part of an application and deny the remainder. The nature of approvals granted, and of the denials, shall be transmitted to the applicant and municipal agency within five working days.

### SUBCHAPTER 7. PROVISIONS FOR AMENDED AND SPECIAL AIRPORT STANDARDS

#### 16:62-7.1 General provisions

(a) Under Section 5 of the Air Safety and Zoning Act of 1983, the Commissioner may, notwithstanding any other provisions of this chapter, adopt an amended or special standard for an airport when he determines that local conditions require it. Those standards shall be adopted under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Amended by R.1995 d.76, effective February 6, 1995.  
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

#### 16:62-7.2 Amended and special standards

(a) The runway end subzone for Runway 30 of Somerset Airport shall end at the western border of Bridgewater Township, Somerset County, subject to the following conditions:

1. The lots which fall within the safety zone of Bridgewater Township, Somerset County, delineated pursuant to N.J.A.C. 16:62-3, shall not be further subdivided.

2. Within the safety zone of Bridgewater Township, Somerset County, delineated pursuant to N.J.A.C. 16:62-3, no person shall build, rebuild, create or cause to be built or rebuilt or created any structure which will exceed a height of 35 feet nor shall any person plant, or cause to be planted, or permit to grow any tree or vegetation which will exceed height of 50 feet.

New Rule, R.1990 d.441, effective September 4, 1990.  
See: 22 N.J.R. 1899(a), 22 N.J.R. 2751(b).

### SUBCHAPTER 8. PERMITS FOR DEVELOPMENTS IMMUNE TO LOCAL ORDINANCE

#### 16:62-8.1 General provisions

(a) In the event of a proposed development within an Airport Safety Zone which is immune to local ordinance, the standards of this chapter still apply to such proposed development.

(b) Any persons proposing a development immune to local ordinance within an Airport Safety Zone shall make application to the Department in accordance with N.J.A.C. 16:62-6.1 and 16:62-6.3. The requirement for local approval under N.J.A.C. 16:62-6.2 and 63(a)2 is waived, and the permit application fee under N.J.A.C. 16:62-6.3(a)5 is waived.

(c) The Department shall review application for permits for developments immune to local ordinance in a manner with other application provisions of this chapter.

Amended by R.1995 d.76, effective February 6, 1995.  
See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

### SUBCHAPTER 9. EXISTING LAND USES NOT CONFORMING TO THE STANDARDS OF THIS CHAPTER

#### 16:62-9.1 General provisions

(a) No ordinance adopted under this chapter shall require the removal or lowering of, or other change or alteration of any structure or tree not conforming to the rules when this chapter was adopted.

(b) Within the context of an ordinance adopted to conform with the standards of this chapter, a preexisting land use which is located within a CLEAR ZONE as delineated in N.J.A.C. 16:62-3.5 and not in conformance with the rules may at the discretion of the municipality, be classified within such an ordinance as either "nonconforming" or "conditional."

Amended by R.1989 d.242, effective May 15, 1989.  
 See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

In (b): Added language about "CLEAR ZONE" and deleted language regarding nonconforming or conditional land use waivers. Deleted (c), which elaborated on provisions in old (b).

**Case Notes**

Air Safety and Zoning Act of 1983 was not unconstitutional. *Patzau v. New Jersey Dept. of Transp.*, 271 N.J.Super. 294, 638 A.2d 866 (A.D.1994), certification denied 138 N.J. 268, 649 A.2d 1288.

**SUBCHAPTER 10. IMPLEMENTATION DEADLINES**

**16:62-10.1 General provisions**

(a) Municipalities affected by the provisions of this chapter shall implement the standards of this chapter as of April 15, 1985, or in the case of clear zones, May 15, 1989.

(b) No municipal body may grant variances or subdivisions in an Airport Safety Zone under their existing ordinances whose purpose would be contrary to the standards of this chapter.

Amended by R.1989 d.242, effective May 15, 1989.  
 See: 20 N.J.R. 3007(a), 21 N.J.R. 1376(c).

Deleted old (a) and added new (a) language specifying implementation deadlines for municipalities affected by chapter provisions.  
 Amended by R.1995 d.76, effective February 6, 1995.  
 See: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).

**SUBCHAPTER 11. LIABILITY**

**16:62-11.1 Liability**

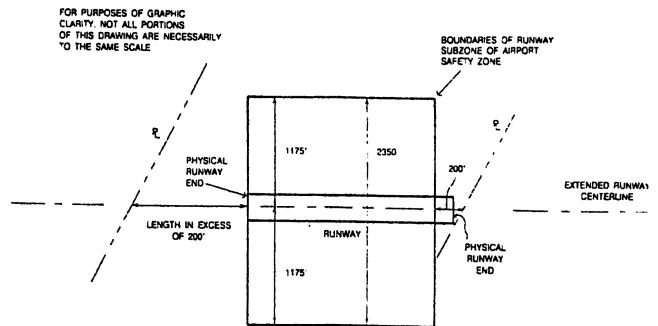
(a) Violation of any provision of this chapter may be grounds for fine, modification, suspension or revocation of any license issued under Title 6 of the New Jersey Statutes Annotated.

(b) The Commissioner may institute, in any court of competent jurisdiction, an action in the name of the State to prevent, restrain, correct, or abate any violation of any provision of this chapter and by way of injunction or otherwise, relief from the court.

**APPENDIX**

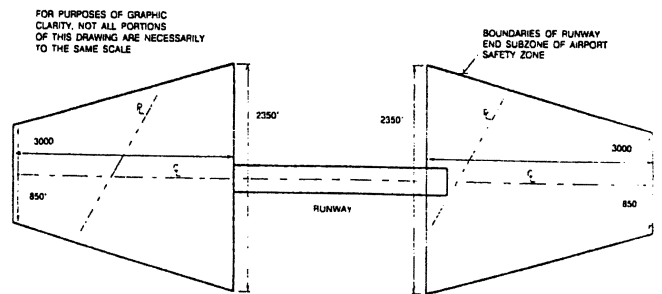
**Airport Safety Zone Dimensions**

FIGURE 1.



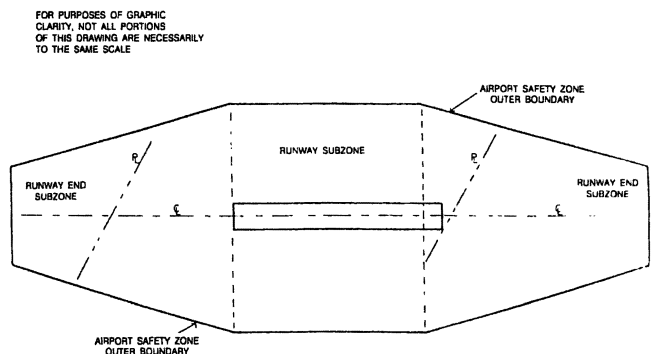
GRAPHIC DEPICTION OF THE GENERAL CONSTRUCTION OF THE RUNWAY SUBZONE OF AN AIRPORT SAFETY ZONE

FIGURE 2.



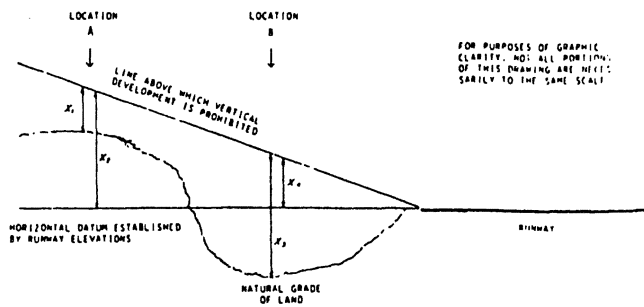
GRAPHIC DEPICTION OF THE GENERAL CONSTRUCTION OF THE RUNWAY END SUBZONE(S) OF AN AIRPORT SAFETY ZONE

FIGURE 3



GRAPHIC DEPICTION OF THE GENERAL OVERALL CONSTRUCTION AND OUTERMOST BOUNDARIES OF AN AIRPORT SAFETY ZONE

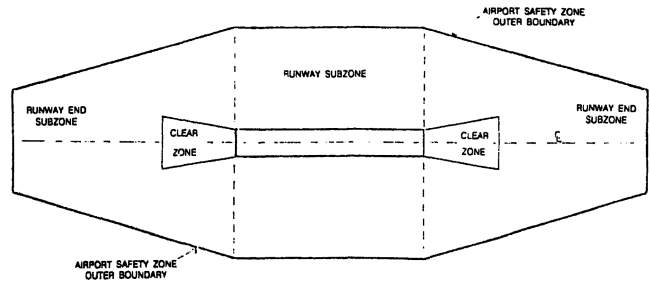
FIGURE 4 (No change)



FOR PURPOSES OF GRAPHIC CLARITY, NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE

THE MINIMUM OBSTRUCTION ORDINANCE STANDARDS RELATE DIRECTLY TO THE HORIZONTAL DATUM ESTABLISHED BY RUNWAY ELEVATIONS, AND NOT THE HEIGHT ABOVE THE NATURAL GRADE OF THE LAND. FOR EXAMPLE, AT LOCATION A AN ORDINANCE MAY REFERENCE A HEIGHT RESTRICTION  $x_2$  FEET, BUT AT THAT LOCATION THE DEVELOPABLE HEIGHT RESTRICTION ABOVE THE NATURAL GRADE OF THE LAND IS ACTUALLY  $x_1$  FEET. AT LOCATION B THE ORDINANCE HEIGHT RESTRICTION MAY BE  $x_4$  FEET BUT THE DEVELOPABLE HEIGHT RESTRICTION MAY BE  $x_3$  FEET.

FIGURE 7.

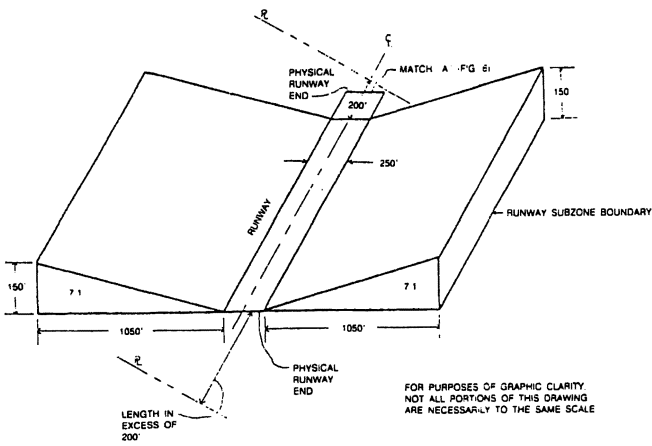


GRAPHIC DEPICTION OF THE CLEAR ZONE DIMENSIONS.

INNER WIDTH 250 FEET  
OUTER WIDTH 450 FEET  
LENGTH 1,000 FEET

FIGURE 5.

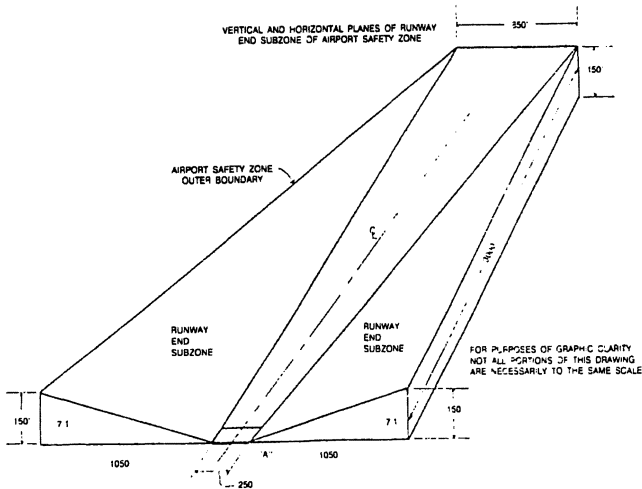
VERTICAL AND HORIZONTAL PLANES OF RUNWAY SUBZONE OF AIRPORT SAFETY ZONE



FOR PURPOSES OF GRAPHIC CLARITY NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE

FIGURE 6

VERTICAL AND HORIZONTAL PLANES OF RUNWAY END SUBZONE OF AIRPORT SAFETY ZONE



FOR PURPOSES OF GRAPHIC CLARITY NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE

Amended by R.1995 d.76, effective February 6, 1995  
Sec: 26 N.J.R. 4502(a), 27 N.J.R. 525(a).