**Section 16.140 Pre-Existing, Non-Conforming Uses (Grandfather Clause)**

a) The surface requirements prescribed by this Part shall not be construed to require the removal, lowering or other changes, or alteration of any structures or vegetation that were in compliance with prior airport hazard zoning rules adopted by the Division but that are not now in compliance with this Part as of its effective date. Likewise, the surface requirements shall not be construed to interfere with the continuance of any non-conforming use. Nothing in this Part shall require any changes in construction, alteration, or intended use of any structure, the construction or alteration of which is being diligently carried out and was begun prior to the applicability of this Part to that specific airport.

b) This subsection (b) must be read with Section 16.40(e) that restricts the causing or allowing of structures or vegetation to penetrate imaginary surfaces associated with a planned runway or approach change. It is possible, therefore, that some vegetation or structures permissible at a certain location under previously established airport hazard zoning requirements will not be allowed, under this Part, when plans are made to change a runway or approach. Specifically, if construction of a structure begins and is diligently pursued prior to a change in plans for the runway or approach, the structure will be allowed. The structure and/or vegetation will not be allowed to increase to a size that would further penetrate an imaginary surface.

c) Marking and Lighting

1) Notwithstanding the provisions of subsection (a) of this Section, the owner of any existing non-conforming structure must permit the installation, operation and maintenance of markers and lights deemed necessary by the Division. Any installation, operation and maintenance of markers or lights shall be the responsibility and expense of the airport.

2) In determining the necessity for markers and lights, the Division shall consider all relevant conditions, including, but not limited to, the traffic patterns, the volume and type of aircraft at the airport, the general weather patterns in the vicinity, the topography of the airport and the surrounding area, and the height of the structure and its proximity to the approach and transition slopes of the existing runways.