

1                           BEFORE THE LAND USE BOARD OF APPEALS  
2   OF THE STATE OF OREGON

3  
4 WILLIAM MOORE and MARILYN MOORE,   )  
5    )  
6                           Petitioners,    )  
7    )  
8           vs.    )  
9    )  
10 COOS COUNTY,    )  
11    )  
12                           Respondent,    )  
13    )  
14           and    )  
15    )  
16 FRANK BLACK and RAMONA BLACK,    )  
17    )  
18                           Intervenors-Respondent.                                )

LUBA No. 95-149  
FINAL OPINION  
AND ORDER

19  
20  
21           On remand from the Court of Appeals.

22  
23           William Moore and Marilyn Moore, Bandon, represented  
24 themselves.

25  
26           David R. Ris, County Counsel, Coquille, represented  
27 respondent.

28  
29           Jerry O. Lesan, Coos Bay, represented intervenor-  
30 respondent.

31  
32           HANNA, Chief Referee; LIVINGSTON, Referee, participated  
33 in the decision.

34  
35                           AFFIRMED   01/16/97

36  
37           You are entitled to judicial review of this Order.  
38 Judicial review is governed by the provisions of ORS  
39 197.850.

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the county's approval of a dwelling  
4 in an exclusive farm use (EFU) zone.

5 **INTRODUCTION**

6 This appeal is before us for the third time. In Moore  
7 v. Coos County, (LUBA No. 94-220, January 27, 1995) (Moore  
8 I), we granted the county's motion for a voluntary remand  
9 following petitioners' appeal of the county's approval of a  
10 dwelling in an EFU zone. On remand, the county again  
11 approved the dwelling on two independent and alternative  
12 bases, either of which, if upheld, would allow a dwelling on  
13 the subject property. First, the county found the  
14 application satisfied the criteria for approval of a nonfarm  
15 dwelling under ORS 215.284(2) and OAR 660-33-130(4)(c).  
16 Second, the county determined a dwelling was permitted under  
17 Coos County Zoning and Land Development Ordinance 3.4.300,  
18 which allows the resumption of an interrupted or abandoned  
19 nonconforming use.

20 In Moore v. Coos County, 31 Or LUBA \_\_\_\_ (LUBA No. 95-  
21 149, July 3, 1996) (Moore II), LUBA remanded the county's  
22 decision on both bases. On the first basis we concluded  
23 that the subject parcel did not qualify for a nonfarm  
24 dwelling because we determined the parcel could be used in  
25 conjunction with an adjacent equine operation as a farm use.  
26 On the second basis we determined that application of the

1 county's code would allow a use in conflict with ORS  
2 215.130(7). Intervenor and the county appealed our decision  
3 to the Court of Appeals.

4 In Moore v. Coos County, 144 Or App 195, \_\_\_ P2d \_\_\_  
5 (1996) (Moore III) the Court of Appeals decided the case on  
6 only the first of the alternative bases of decision.<sup>1</sup> The  
7 court determined that the adjacent equine operation was not  
8 a farm use in conjunction with which intervenors' property  
9 could be used. The court remanded the decision to us,  
10 stating:

11 "we hold that the potential use of [intervenor's]  
12 property that [petitioners] propose is not for  
13 livestock production and that the county correctly  
14 concluded that [petitioners' adjacent] use  
15 therefore does not enter the general unsuitability  
16 calculus under ORS 215.284. Because LUBA held  
17 otherwise, it did not reach [petitioner's] related  
18 substantial evidence argument. We remand for it  
19 to do so." Moore III, supra, 144 Or App at 200.

## 20 **DISCUSSION**

21 LUBA must determine if there is substantial evidence  
22 for the county's conclusion that the subject parcel is  
23 generally unsuitable for the production of farm crops and  
24 livestock. With respect to this issue, the Court of Appeals  
25 stated:

26 "Although there was abundant evidence that the  
27 parcel itself was unsuitable for farm use,  
28 [petitioner] Moore argued to the county that they

---

<sup>1</sup>The court stated that because it decided the case on the first basis of approval it did not consider the second basis of approval.

1           were 'willing' to use [intervenor's] property as  
2           an adjunct of their neighboring boarding stable \*  
3           \* \*." Moore III, supra, 144 Or App at 197.

4           Our decision on the first basis of approval in Moore II  
5           was limited to our determination that the subject parcel did  
6           not qualify for a nonfarm dwelling because of its potential  
7           for use as an adjunct to petitioners adjacent equine  
8           operation. The potential for that use was the basis for  
9           petitioners' substantial evidence argument. Petitioners did  
10          not argue and the evidence does not indicate that there are  
11          any other parcels in conjunction with which the subject  
12          parcel could be used. In view of the holding in Moore III  
13          that the adjacent equine operation is not a farm use, and  
14          absent another parcel in conjunction with which the subject  
15          parcel could be used, the evidence establishes that the  
16          subject parcel is unsuitable for farm use.<sup>2</sup>

17          The county's decision to approve a nonfarm dwelling is  
18          affirmed.

---

<sup>2</sup>In Moore II we described the county's findings in which it extensively reviewed the evidence, and stated:

"Over one-half of the 36-page decision is devoted to findings and conclusions qualifying the parcel for a nonfarm dwelling. The decision discusses soil characteristics, water availability and potential uses, which it finds generally to be limited to cranberry production. The decision sets forth descriptions of the qualifications of at least five area farmers and their opinions, in which they describe the subject property's lack of value for any farm use." Moore II, supra, at slip op 7.