

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.¹ 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

¹The 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.²

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

²In 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.