Growth Management Committee

Monday, April 3, 2006
3:15 PM – 5:15 PM
212 Knott Building

Allan G. Bense
Speaker

Randy Johnson
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Growth Management Committee

Start Date and Time:	Monday, April 03, 2006 03:15 pm
End Date and Time:	Monday, April 03, 2006 05:15 pm
Location:	212 Knott Building
Duration:	2.00 hrs

Workshop the following issues:

County Preemption and HB 949 - Municipalities by Rep. Arza
Green Building Standards

NOTICE FINALIZED on 03/30/2006 15:20 by RESHARD.DEBRA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 949 Municipalities
SPONSOR(S): Arza
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	6 Y, 2 N	Camechis	Hamby
2) Growth Management Committee		Grayson	Grayson
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

This bill limits the applicability of existing and future county charter provisions, countywide county ordinances, county land development regulations, and countywide special acts governing the use, development or redevelopment of land, or providing an exclusive method of municipal annexation.

Existing charter provisions, ordinances, land development regulations, and special acts governing the use, development or redevelopment of land, or providing an exclusive method of municipal annexation are no longer applicable in or to a municipality within a county unless approved by a majority vote of the electors within the municipality or the municipal governing board. Charter provisions, ordinances, land development regulations, and special acts governing the use, development or redevelopment of land, or providing an exclusive method of municipal annexation that are adopted after the effective date of this bill may not be applied to a municipality within the county unless first approved by a majority vote of the electors within the municipality or the municipal governing board.

This bill appears to be retroactive because it provides that existing county charter ordinances, county ordinances, county land development regulations, and countywide special acts are no longer applicable in or to municipalities within the county unless approved by the electors within the municipality or the municipal governing board.

This bill does not appear to have a fiscal impact on the state.

Local Mandate Analysis
The bill requires a county to amend or repeal a charter, ordinance, or land development regulation that preempts municipalities within the county with regard to land use, development or redevelopment of land, or that provides an exclusive method for annexation unless the preemption is approved by the municipality. Amendment or repeal of existing provisions will require counties to expend county funds. This expenditure may qualify as a mandate under Art. VII, s. 18 of the Florida Constitution; however, if the aggregate statewide fiscal impact on counties is less than $1.9 million, the bill is exempt from the mandates requirements. Although the fiscal impact has not been determined, this bill may require an expenditure of funds that exceeds $1.9 million. If the fiscal impact of the bill is greater than $1.9 million, the Legislature must find an important state interest and the bill must pass by a two-thirds vote of each house to effectively bind the counties.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: If a county contains multiple cities, and all those cities reject a countywide provision governing land use, development or redevelopment of land, or voluntary annexation, the result could be multiple ordinances governing the same subjects within the county. For example, Broward County contains 31 cities. Each of these cities may choose to enact independent ordinances governing land use in the area.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

County Government

Although the state's first counties were established in 1821, the Florida Constitution of 1861 gave counties constitutional status for the first time. Counties were recognized as legal subdivisions of the state and the Legislature was granted the power to create new counties and alter county boundaries. By 1925, county boundaries were fixed and have, with a few minor changes, remained unchanged. Today, there are 67 counties in Florida. Home rule charters have been adopted in 19 counties, and 75% of the state's population resides in a charter county.[1] Nine charter counties contain more than nine municipalities, while Broward and Palm Beach contain 30 or more.

Article VIII, section 1 of the State Constitution requires the state to be divided by law into political subdivisions called "counties". Counties may be created, abolished, or the boundaries modified by law. The State Constitution recognizes two types of county government in Florida: 1) counties that are not operating under a county charter (non-charter counties) and 2) counties that are operating under a county charter adopted by the electors of the county in a countywide special election called for that purpose.

Article VIII, sections 1(f) and (g) of the State Constitution, respectively address non-charter and charter county powers as follows:

> (f) Non-charter government. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
>
> (g) Charter government. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. *The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.* [Emphasis added]

[1] The following counties have adopted charters: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Miami-Dade (a consolidated city), Duval, Hillsborough, Lee, Leon, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Volusia.

Perhaps the most significant difference between non-charter and charter county powers is that the constitution provides a direct constitutional grant of the power of self-government to a county operating under a charter approved by the electors of the county, whereas a non-charter county has only those powers the Legislature provides by general or special law.

Further, the Florida Supreme Court has concluded that section 1(g) "was intended to specifically give charter counties two powers unavailable to non-charter counties: the power to preempt conflicting municipal ordinances, and the power to avoid intervention of the legislature by special laws. The power to preempt is the power to exercise county power to the exclusion of municipal power. Preemption is a transfer of power, from exclusive municipal authority or concurrent authority, to exclusive county authority".[2]

Under this constitutional grant of power, a county's charter may authorize the county to regulate an activity on a countywide basis and provide that the county regulation prevails over any conflicting municipal ordinance.[3] The Florida Supreme Court has concluded that section 1(g) permits "regulatory preemption by counties" and that a charter county may preempt a municipal regulatory power in such areas when county-wide uniformity will best further the ends of government.[4] In addition to this grant of power, however, is the limitation imposed by the constitution, which grants charter counties all powers of self-government "not inconsistent with general law". The interrelationship between the grant of power to determine which ordinances prevails and the limitation of charter county authority by general law is unclear and has not been directly addressed by the Florida courts. Therefore, the constitutionality of a general law that limits a charter county's power to determine that county ordinances prevail over any conflicting municipal ordinances is uncertain.

Adoption of County Charters

A county that does not have a charter form of government may locally initiate and adopt a county home rule charter pursuant to the provisions of ss. 125.60-125.64, F.S. In addition to satisfying multiple statutory requirements, the charter must be adopted by a majority vote of the qualified electors of the county.

Upon petition by 15 percent of the qualified electors of a county or following adoption of a resolution by the board of county commissioners requesting that a charter commission be established, the charter commission must be appointed. The commission must conduct a comprehensive study of the operation of county government and of the ways it could be improved or reorganized. The commission must conduct three public hearings, vote upon a proposed charter at its last hearing, and forward the proposed charter to the board of county commissioners for the holding of a referendum election. Immediately after the commission submits a proposed charter, the board of county commissioners must call a special election within a specified time frame to determine whether the qualified electors of the county approve the proposed charter. If a majority of those voting disapprove the proposed charter, a new referendum may not be held for two years. Once adopted, the charter may be amended only by vote of the county electors.

Alternatively, the board of county commissioners may propose by ordinance a charter that is consistent with Part IV of ch. 125, F.S., the "Optional Charter County Law." Section 125.86, F.S., specifies the powers and duties of the charter county, which include all powers of local self-government "not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the charter."

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[2] *Broward County v. City of Fort Lauderdale*, 480 So.2d 631 (Fla. 1985).
[3] *Broward County v. City of Fort Lauderdale*, 480 So.2d 631 (Fla. 1985); *City of New Smyrna Beach v. County of Volusia*, 518 So.2d 1379 (Fla. 1988).
[4] *City of New Smyrna Beach v. County of Volusia*, 518 So.2d 1379 (Fla. 1988), citing *Broward County v. City of Fort Lauderdale*, 480 So.2d 631 (Fla. 1985).

County Statutory Home Rule Powers

Section 125.01, F.S., grants broad home rule powers to non-charter and charter counties. These powers include the power to:

- Prepare and enforce comprehensive plans for the development of the county;
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public;
- Adopt, by reference or in full, and enforce housing and related technical codes and regulations; establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs; and
- Provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs.

The section specifically provides that the legislative purpose is to be liberally construed to grant all counties broad home rule powers authorized in the State Constitution. Under this broad grant of general law powers, specific statutory authority to enact ordinances or to deliver services to residents of the counties is not required. All counties have home rule authority to enact ordinances for any county purpose absent a general law limitation.

Section 125.86(7), F.S., vests the powers of a charter county in the board of county commissioners. One power explicitly granted to the board of county commissioners of a charter county is the power to "[a]dopt, pursuant to the provisions of the charter, such ordinances of countywide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform countywide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county".

County Provisions Regarding Land Use[5]

In recent years, some charter counties have amended their charter to provide an exclusive method for annexation. Some counties have also enacted building height limitations that apply in municipal jurisdictions that are within the county. In addition, some counties exercise land use planning responsibility, in varying degrees, for municipalities located within the county and certain land use decisions within such municipalities may require county approval. These types of charter provisions or ordinances have the effect of preempting municipal authority with respect to land use planning.

For example, voters in Palm Beach and Seminole counties approved charter provisions relating to annexation in 2004. The Palm Beach county provision gave county commissioners the ability to set annexation guidelines by ordinance. Several municipalities challenged the charter amendment in circuit court.12 The circuit court held, in part, that the provisions allowing the county to define the exclusive method for voluntary annexation, by ordinance, violates the requirement in s. 171.044(4), F.S., that an exclusive method of annexation be contained in the charter itself.13 Seminole County voters approved a charter amendment that would give the county final authority over land-use changes and development densities in certain portions of east Seminole County. This provision is currently on appeal.

[5] *Senate Staff Analysis and Economic Impact Statement for SB 1608*, prepared by the Senate Community Affairs Committee, p. 4 (March 15, 2006).

Municipal Government
The municipal form of government has been recognized in Florida since 1821. Historically, counties have provided state services such as courts, tax collections, sheriff functions, health and welfare services uniformly throughout the county, while municipalities are created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. Currently, there are 408 municipalities in Florida.

Article VIII, section 2 of the State Constitution provides that "[m]unicipalities may be established or abolished and their charters amended pursuant to general or special law." Municipal home rule powers are provided in that section as follows:

> Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

In general, a municipality may exercise any power for municipal purposes except as otherwise provided by general or special law. In 1972, the Legislature enacted ch. 166, F.S., granting municipalities broad governmental, corporate, and proprietary powers necessary to enable municipalities to independently function and provide services to residents.

Growth Management and Land Use Generally[6]
The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 ("Act"), ss. 163.3161-163.3246, F.S., establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making. Under the Act, the Department of Community Affairs adopted by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the Act. Such minimum criteria require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

Annexation[7]
Section (2)(c), Art. VIII of the State Constitution, provides authority for the Legislature to establish annexation procedures for all counties except Miami-Dade. Annexation can occur using several methods: special act, charter, interlocal agreement, voluntary annexation, or involuntary annexation. Annexation through a special act must meet the notice and referendum requirements of section 10, Art. III of the State Constitution, which are applicable to all special acts.

The "Municipal Annexation or Contraction Act" in ch. 171, F.S., codifies the State's annexation procedures and was enacted in 1974 to ensure sound urban development, establish uniform methods for the adjustment of municipal boundaries, provide for efficient service delivery in areas that become urban, and limit annexation to areas where municipal services can be provided.[8] At the time ch. 171, F.S., was created, the prevailing policy focused on the strength of county governments and regional

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[6] *Id.* at p. 1.
[7] *Id.* at p. 2 (With modifications.)
[8] s. 171.021, F.S.

planning agencies. Consequently, Florida's annexation statutes concentrate on the expansion and contraction of municipal boundaries.[9]

Current annexation policy in Florida has given rise to a number of issues: difficulty in planning to meet future service needs, confusion over logical service areas and maintenance of infrastructure, duplication of essential services, and zoning efforts thwarted by landowners shopping for the best development climate. While existing annexation procedures may adequately address the concerns of landowners within a proposed annex area, the residents of remaining unincorporated areas or residents of the municipality proposing the annexation may also be significantly affected by the potential loss of revenue or inefficiencies in service delivery.

An area proposed for annexation must be unincorporated, contiguous, and reasonably compact.[10] For a proposed annexation area to be contiguous under ch. 171, F.S., a substantial portion of the annexed area's boundary must be coterminus with the municipality's boundary.[11] "Compactness," for purposes of annexation, is defined as the concentration of property in a single area and does not allow for any action that results in an enclave, pocket, or fingers in serpentine patterns.[12]

A newly annexed area comes under the city's jurisdiction on the effective date of the annexation. Following annexation, a municipality must apply the county's land use plan and zoning regulations until a comprehensive plan amendment is adopted that includes the annexed area in the municipalities' Future Land Use Map. It is possible for the city to adopt the comprehensive plan amendment simultaneously with the approval of the annexation. However, there is no requirement that a city amend its comprehensive plan prior to annexation.[13] In the interim, a city must apply county regulations or wait to apply its own rules.

Cities may annex enclaves of 10 acres or less by interlocal agreement with the county under the provisions of s. 171.046, F.S. An enclave is defined in s. 171.031(13), F.S., as any unincorporated improved or developed area lying within a single municipality or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality. Enclaves of 10 acres or less can also be annexed by municipal ordinance when there are fewer than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum. In a similar process, s. 163.3171, F.S., allows for a joint planning agreement between a municipality and county to allow annexation of unincorporated areas adjacent to a municipality.

Section 171.044, F.S., provides the procedures for a voluntary annexation which occurs when 100 percent of the landowners in an area petition a municipality. In addition to the annexing municipality enacting an ordinance allowing for the annexation to occur, there are certain notice requirements that must be met. This section does not apply where a county charter provides the exclusive method for voluntary annexation.[14] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[15]

EFFECT OF PROPOSED CHANGES

This bill creates s. 163.3172, F.S., to address the application to municipalities of countywide provisions regarding land use, development or redevelopment of land, and voluntary annexation. This new section provides legislative findings as follows:

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[9] See Lance deHaven-Smith, Ph.D., FCCMA Policy Statement on Annexation, Oct. 12, 2002, at 16-17, http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.
[10] ss. 171.0413-171.043, F.S.
[11] s. 171.031(11), F.S.
[12] s. 171.031(12), F.S.
[13] See *1000 Friends of Fla., Inc. v. Florida Dep't of Community Affairs*, 824 So. 2d 989 (Fla. 4th DCA 2002).
[14] s. 171.044(4), F.S.
[15] s. 171.044(4), F.S.

- Municipalities are the units of local self-government closest to the people they serve and thereby are best situated to determine the unique needs of their communities;
- Municipalities provide their residents a true voice as to the character and values of their local communities;
- There have been increasing and numerous preemptions of municipal democratic powers by other forms of local government;
- Municipalities must retain the authority to perform the functions that are of most immediate concern to their citizens.

Existing Charter Counties: An existing charter county *charter provision* governing the use, development, or redevelopment of land, or providing an exclusive method of annexation will not be applicable in or to a municipality within the county unless:

(1) the city commission approves its application within the city, or
(2) the voters of the city approve its application within the city.

An existing charter county *ordinance, land development regulation, or county wide special act* governing the use, development, or redevelopment of land, or providing an exclusive method of annexation will not be applicable in or to a municipality within the county unless:

(1) the city commission approves its application within the city, or
(2) the voters of the city approve its application within the city, and
(3) the voters of the county approve the provision.

Future Charter Counties: In charter counties in which the charter is adopted by the voters after the effective date of the bill, every countywide charter provision, ordinance, land development regulation, or county wide special act governing the use, development, or redevelopment of land, or providing an exclusive method of annexation will not apply in or to a city within the county unless:

(1) the city commission approves its application within the city, or
(2) the voters of the city approve its application within the city, and
(3) the voters of the county approve the provision.

Existing Non-Charter Counties: In non-charter counties, every ordinance, land development regulation, or county wide special act governing the use, development, or redevelopment of land does not apply in or to a city within the county unless:

(1) the city commission approves its application within the city, or
(2) the voters of the city approve its application within the city, and
(3) the voters of the county approve the provision.

Specifically, the new section provides that, notwithstanding ch. 163, F.S., ch. 125, F.S., and s. 171.044(4), F.S.:

- Any existing or future charter county charter provision, ordinance, land development regulation, or countywide special act that governs the use, development, or redevelopment of land is not effective within and does not apply to any municipality in the county;
- A charter county charter provision, ordinance, land development regulation, or countywide special act may not provide an exclusive method of municipal annexation unless the provision, ordinance, regulation, or special act is approved by a majority vote of the electors within the county and a majority vote of the electors within the municipality at a duly held municipal election or is approved by a majority vote of the municipality's governing board; and

- Existing charter county charter provisions and countywide special acts that have been approved by referendum prior to the effective date of the bill must be readopted in accordance with this section.

By "notwithstanding" chs. 163 and 125, and s. 171.044(4), F.S., the bill is, in effect, a "preemption" of those general laws previously enacted by the Legislature. Therefore, any provision in those statutes that authorize or provide for countywide application of county ordinances or regulations governing the use, development, or redevelopment of land are no longer applicable. The full impact of "notwithstanding" these general laws is unknown due to the broad range of subjects potentially covered by these provisions. For example, ch. 163, F.S., broadly governs intergovernmental programs, including:

- Miscellaneous Programs, such as the Florida Interlocal Cooperation Act of 1969;
- Growth Policy and County and Municipal Planning;
- Land Development Regulation;
- Community Redevelopment;
- Neighborhood Improvement Districts; and
- Regional Transportation Authorities.

Chapter 125, F.S., sets forth the broad Legislative grant of home rule powers to charter and non-charter counties and generally relates to county governance, including provisions regarding:

- Powers and Duties of County Commissioners;
- Self-Government of Counties, which grants general and specific powers to non-charter and charter counties;
- County Administration; and
- Optional County Charters.

Chapter 171, F.S., is known as the "Municipal Annexation or Contraction Act." The purposes of the act are to provide procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits and to set forth criteria for determining when annexations or contractions may take place. Section 171.044, F.S., establishes a method of "voluntary annexation" whereby "[t]he owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality." Section 171.044(4), F.S., provides that "[t]he method of annexation provided by this section shall be supplemental to any other procedure provided by general or special law, except that this section shall not apply to municipalities in counties *with charters which provide for an exclusive method of municipal annexation.*" This bill essentially preempts subsection (4) so that any existing or future county charter provision that provides an exclusive method of voluntary annexation must be approved by the city commission or the qualified electors of a city prior to application of the provision to the city.

The bill explicitly exempts from its provisions any county as defined in s. 125.011, F.S., which only includes Miami-Dade County.[16]

C. SECTION DIRECTORY:

Section 1. Creates s. 163.3172, F.S., limiting application of countywide provisions governing land use, development and redevelopment of land, and voluntary annexation to cities with counties.

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[16] The term "county" is defined in s. 125.011, F.S., as "any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county."

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill does not have a direct impact on local government revenues.

2. Expenditures: Please see Mandates Analysis below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: All countywide provisions governing land use, redevelopment and development of land, are no longer applicable within boundaries of a municipality unless the city commission or the voters of the city approve. Cities may enact ordinances governing land use, regardless of a countywide ordinance, as long as the city complies with state land use requirements. This may result in less stringent permitting and land use regulations within some cities, benefiting private entities wishing to development land in these areas. On the other hand, cities would be authorized to enact more stringent ordinances than those that currently apply on a countywide basis.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill would require a county to amend or repeal a charter, ordinance, or land development regulation that preempts municipalities within the county with regard to land use, development, or redevelopment, or that provides an exclusive method for annexation unless the preemption is approved by the municipality. This may be a Type A mandate because the provision requires counties to expend funds and is subject to analysis under Article VII, Section 18 of the Florida Constitution. There are several exemptions and exceptions in Article VII, Section 18.

One of the exemptions under Article VII, Section 18 covers a bill that has an insignificant fiscal impact. Although the fiscal impact has not been determined, this bill may require an expenditure of funds that exceeds $1.9 million. This bill does not appear to meet any other exemption or one of the exceptions. Therefore, the Legislature must find an important state interest and the bill must pass by a two-thirds vote of each house to effectively bind the counties.

2. Other: Article VIII, s. 1(g) of the State Constitution grants charter counties the power to determine, in the county charter, which ordinances prevail in the event of conflict between county and municipal ordinances.[17] This constitutional provision permits regulatory preemption by counties of municipal

[17] "The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances." Art. VIII, s. 1(g), Fla. Const.

regulatory power if countywide uniformity will best further the ends of government.[18] However, in addition to granting charter counties the express power to provide, by charter, that county ordinances prevail in the event of a conflict with municipal ordinances, the constitution also provides that charter counties have all powers of self-government "not inconsistent with general law".[19] The question is this: Is the Legislature authorized to establish a process by general law to determine which ordinances prevail in the event of a conflict between charter county and municipal ordinances, or does the constitution grant that power exclusively to charter counties?

The interrelationship between the express constitutional grant of power to charter counties to determine which ordinances prevail, and the Legislature's authority to limit the powers of charter counties by general law has not been directly addressed by the Florida courts. The fact that the Legislature is authorized to limit municipal and charter county home rule authority by general law is undisputed and well-settled in case law; however, the Florida courts have not addressed the question of whether the Legislature may limit a charter county's direct grant of constitutional authority to determine whether county ordinances prevail over municipal ordinances. Therefore, the constitutionality of a general law preemption of charter county authority to determine whether county ordinances prevail over municipal ordinances is uncertain until directly addressed by the courts.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: The provisions of this bill are retroactive. A county that has a charter, ordinance, or land development regulation that currently preempts municipalities within the county with regard to land use, development or redevelopment of land, or that provides an exclusive method for annexation, must be repealed or amended unless it is approved by a municipality as provided for in this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

[18] *Broward County v. City of Fort Lauderdale*, 480 So.2d 631 (Fla. 1985).

[19] "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law...." Art. VIII, s. 1(g), Fla. Const.

1 A bill to be entitled
2 An act relating to municipalities; creating s. 163.3172,
3 F.S.; providing legislative findings; prohibiting effect
4 or application of certain county provisions within
5 municipalities unless approved by county and municipal
6 electors or the municipal governing board; providing for
7 readoption of certain county provisions under certain
8 circumstances; providing for nonapplication to certain
9 counties; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Section 163.3172, Florida Statutes, is created
14 to read:
15 163.3172 Municipalities; county authority limitations.--
16 (1) The Legislature finds that municipalities are the
17 units of local self-government closest to the people they serve
18 and thereby are best situated to determine the unique needs of
19 their communities. Municipalities provide their residents a true
20 voice as to the character and values of their local communities.
21 The Legislature recognizes there have been increasing and
22 numerous preemptions of municipal democratic powers by other
23 forms of local government and concludes that municipalities must
24 retain the authority to perform the functions that are of most
25 immediate concern to their citizens.
26 (2) Notwithstanding this chapter, chapter 125, and s.
27 171.044(4), any existing or future charter county charter
28 provision, ordinance, land development regulation, or countywide

29 special act that governs the use, development, or redevelopment
30 of land is not effective within and does not apply to any
31 municipality in the county and a charter county charter
32 provision, ordinance, land development regulation, or countywide
33 special act may not provide an exclusive method of municipal
34 annexation unless the provision, ordinance, regulation, or
35 special act is approved by a majority vote of the electors
36 within the county and a majority vote of the electors within the
37 municipality at a duly held municipal election or is approved by
38 a majority vote of the municipality's governing board. Existing
39 charter county charter provisions and countywide special acts
40 that have been approved by referendum prior to the effective
41 date of this act must be readopted in accordance with this
42 section. This section shall not apply to any county as defined
43 in s. 125.011.
44 Section 2. This act shall take effect July 1, 2006.

Agriboard Industries
A Ryan Development Co., L.C.

Green Building with Compressed Bio-based Products

Who is Agriboard Industries?

- 7 Year Old Company
  - New Venture of Ryan International Airlines
  - $10's of Millions in Product Development
  - Patented Process & Machinery
  - Headquarters & Factory Near Wichita Falls, TX
- Manufacturer of High Performance Structurally Insulated Panels (SIP)
  - Much Stronger than Foam SIPs
  - 2-1/2 Hour Fire Rating
  - Blast Resistant DoD Rating

Agriboard INDUSTRIES

Agriboard SIP

Optimize Energy Performance

↑ High Energy Efficiency Performance

✓ 1 pt per 2.5% Reduction in Design Energy Use (DEU)

- *Agri-Panel vs Stick*
  - Bldg Envelope 7x Tighter
    - 40-50% Utility Savings (reported KS & TX)

Agriboard INDUSTRIES

Agriboard SIP

Construction Waste Management

↓ Divert Construction Debris from Landfills

Agri-Panel = Near "0" Construction Debris

Agriboard INDUSTRIES

Agriboard SIP

Local/Regional Materials

- ↑ Demand for Local Building Products
  - ↓ Environmental Impact of Transportation
  - ↑ Support Local Economy
- ✓ 20% Building Materials Manufactured w/in 500 Miles
  - ✓ 50% of those Extracted, Harvested, Recovered w/in 500 Miles

Agriboard centrally located in North TX

Agriboard INDUSTRIES

Agriboard SP

Acoustic Environment/Noise Control

- Appropriate Acoustics for User Privacy & Comfort

✓ Minimize Environmental Noise

- **Agri-Panel = Great Sound Absorption**

Agriboard

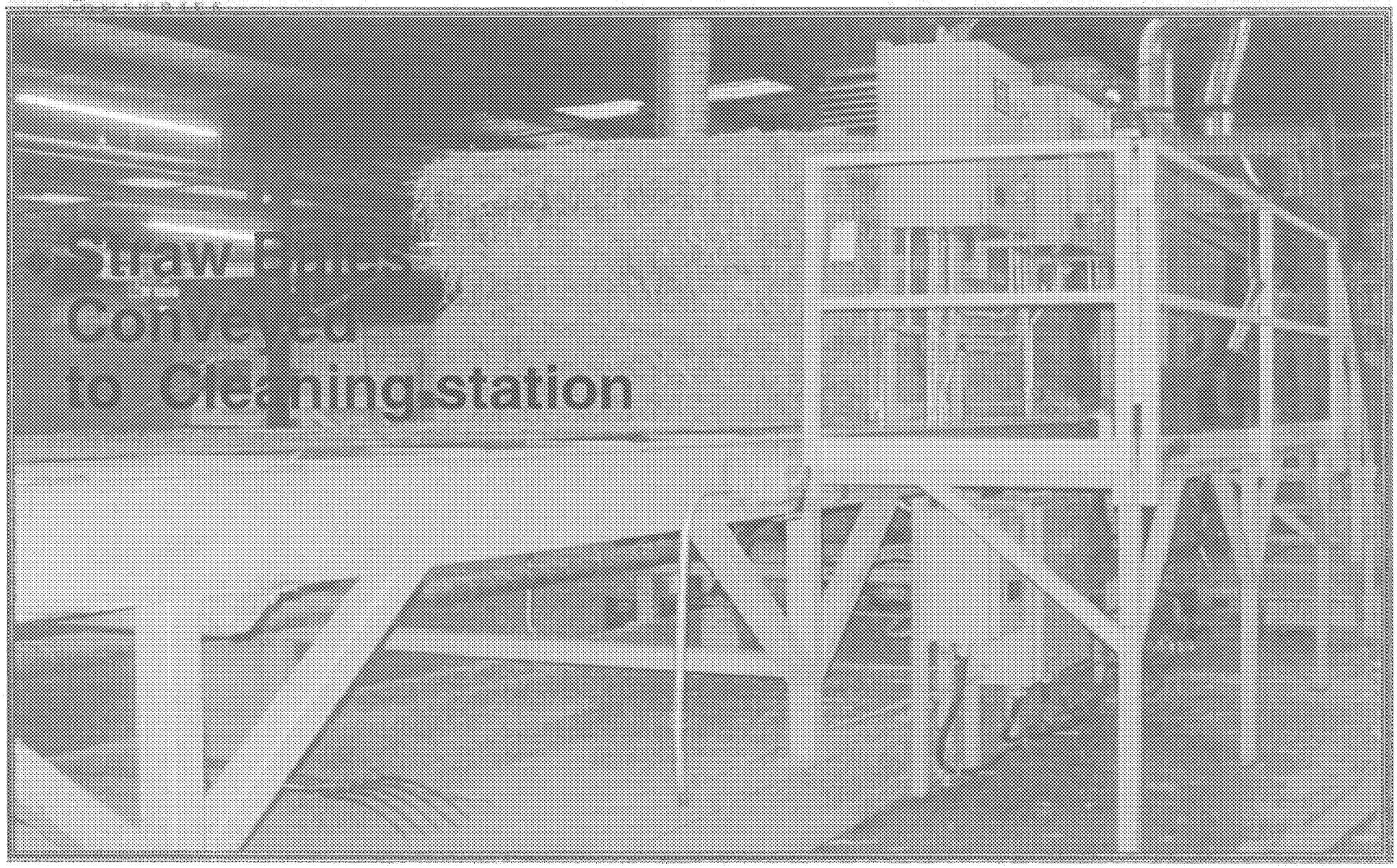
Production Process

- Straw is Stored in Moisture Controlled Environment

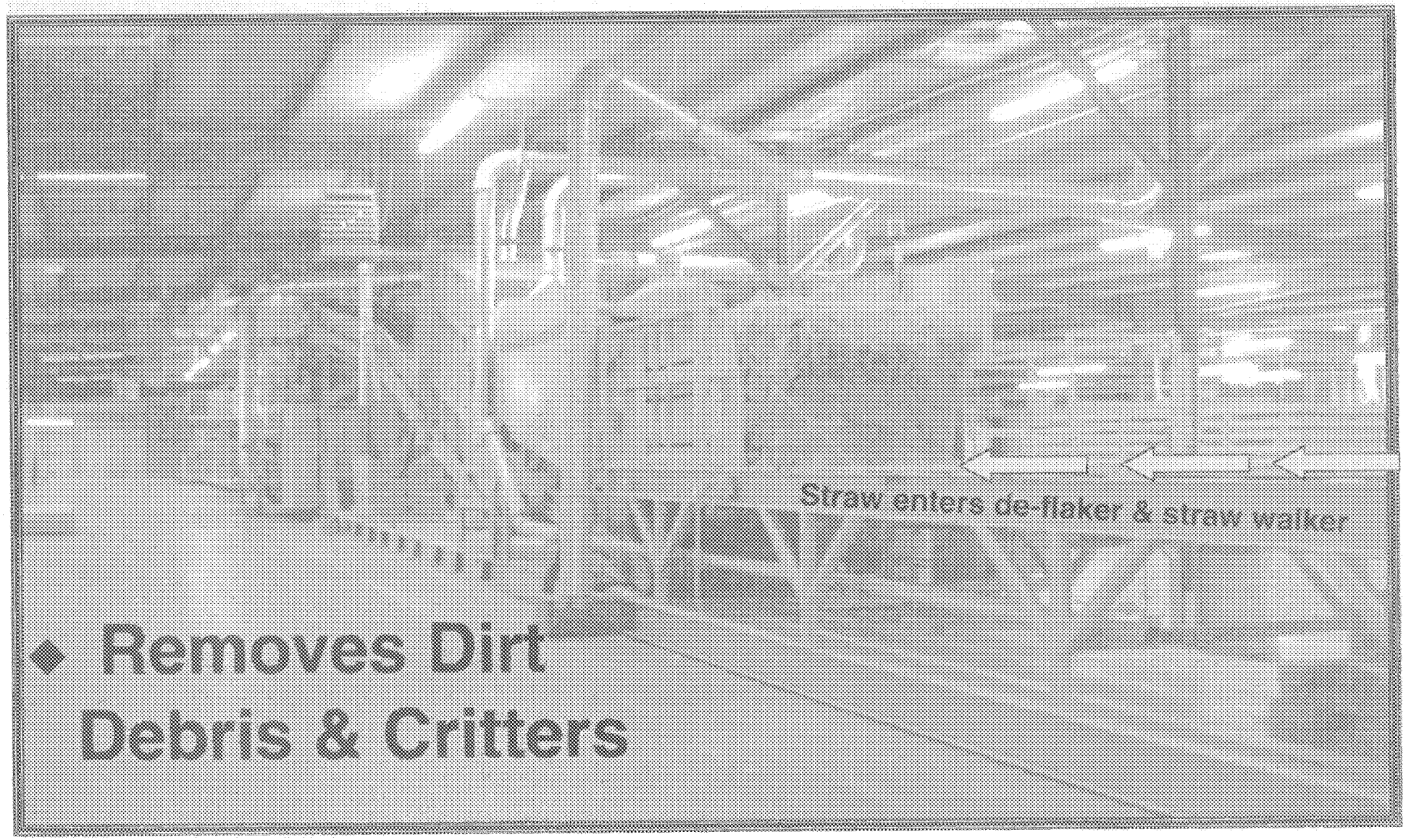
Agriboard INDUSTRIES

Agri-Panel

Production Process



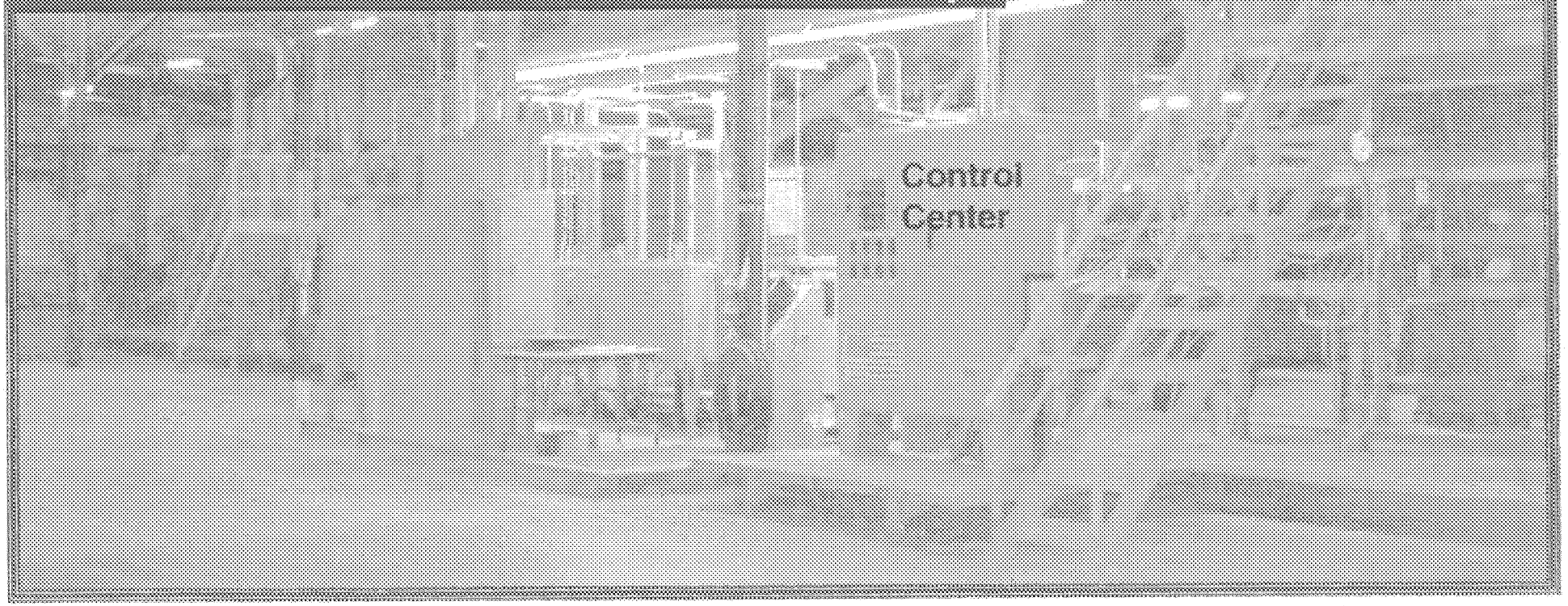
Agri-Panel
Production Process



- Removes Dirt Debris & Critters

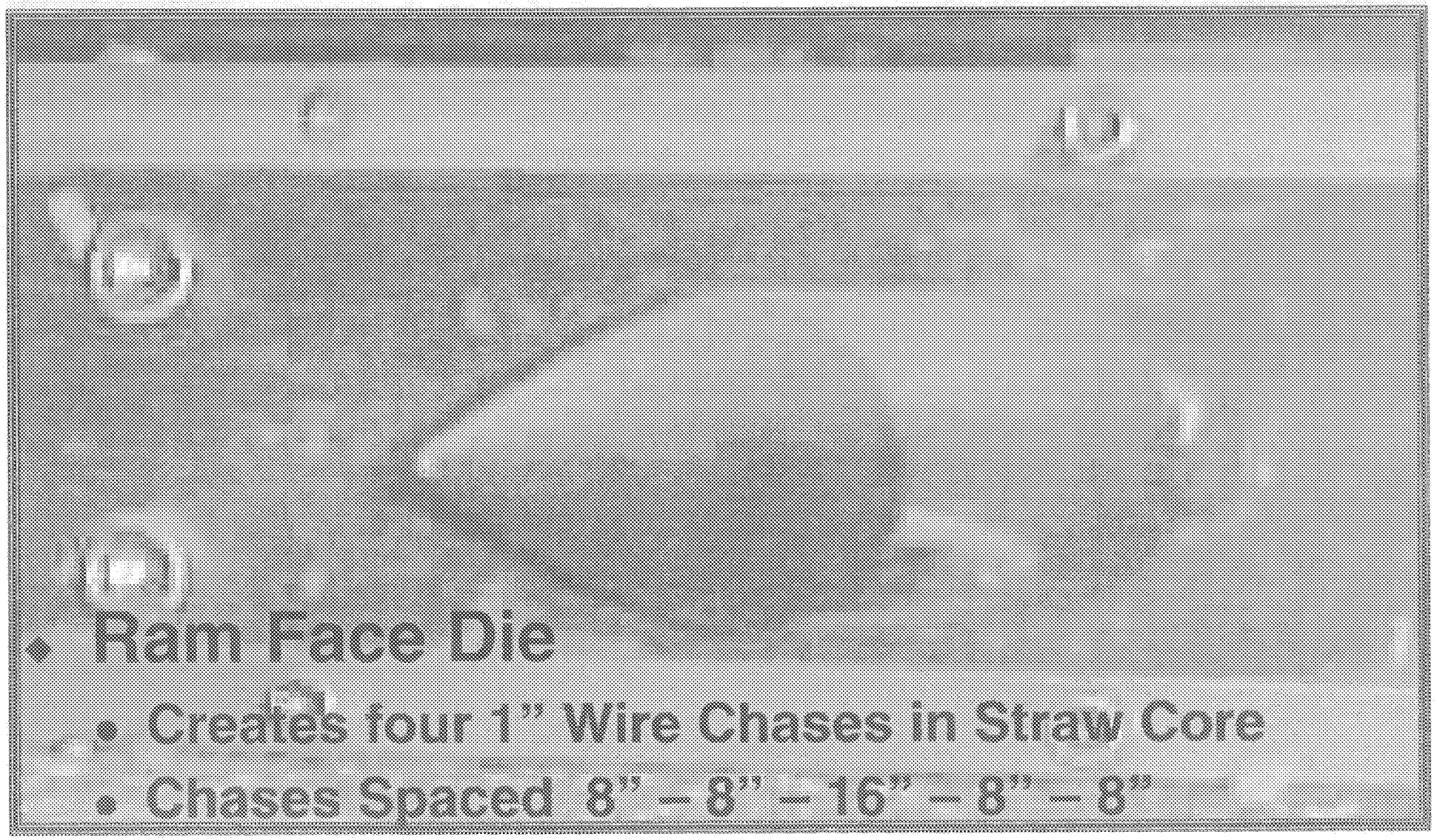
Agri-Panel
Production Process

- Control Center
  - Moisture Content for Density Control
  - Borate Addition for Pest / Mold Resistance
  - Temperature for Sterilization & Bonding
  - Ram Pressure for Panel Strength
  - Panel Thickness for Dimensional Accuracy



Agriboard INDUSTRIES

Agri-Panel
Production Process



- Ram Face Die
  - Creates four 1" Wire Chases in Straw Core
  - Chases Spaced 8" – 8" – 16" – 8" – 8"

Agriboard INDUSTRIES

Agri-Panel
Production Process

Agriboard
INDUSTRIES

Agri-Panel Production Process

The Next Step to Composite Strength

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Engineered Lumber is Key to Agri-Panel Strength

	Bending Stress psi	Shear Stress psi	Compres-sive Stress psi	Mod of Elasticity psi
#2 Spruce Pine Fir	875	135	1,150	1,400,000
1.5E Timber-strand™	2,250	400	1,950	1,500,000
WINNER!	Timber-strand™ +257%	+296%	+169%	+7%

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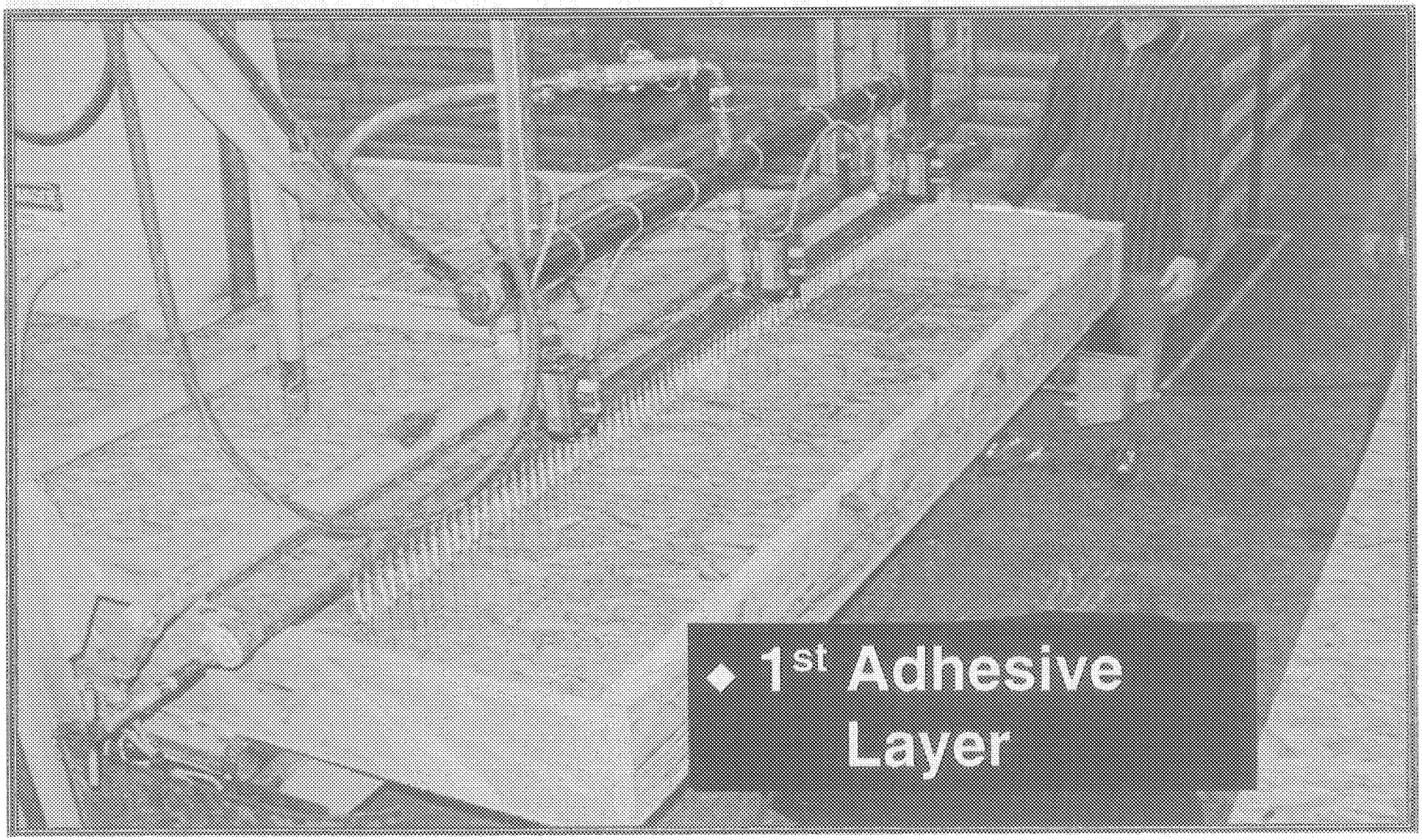
Agri-Panel
Production Process



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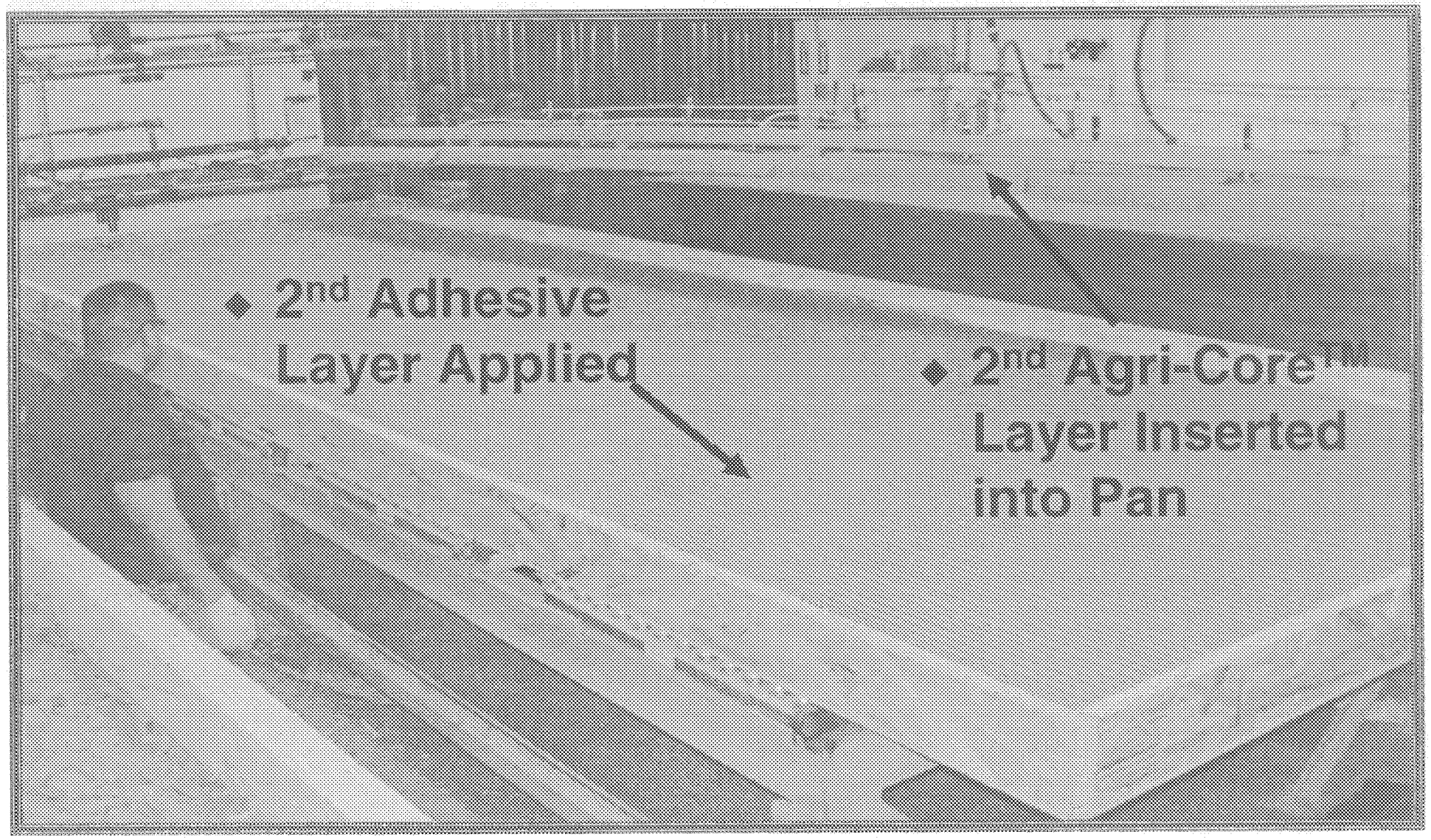
Agri-Panel

Production Process

Agriboard INDUSTRIES

Agri-Panel

Production Process



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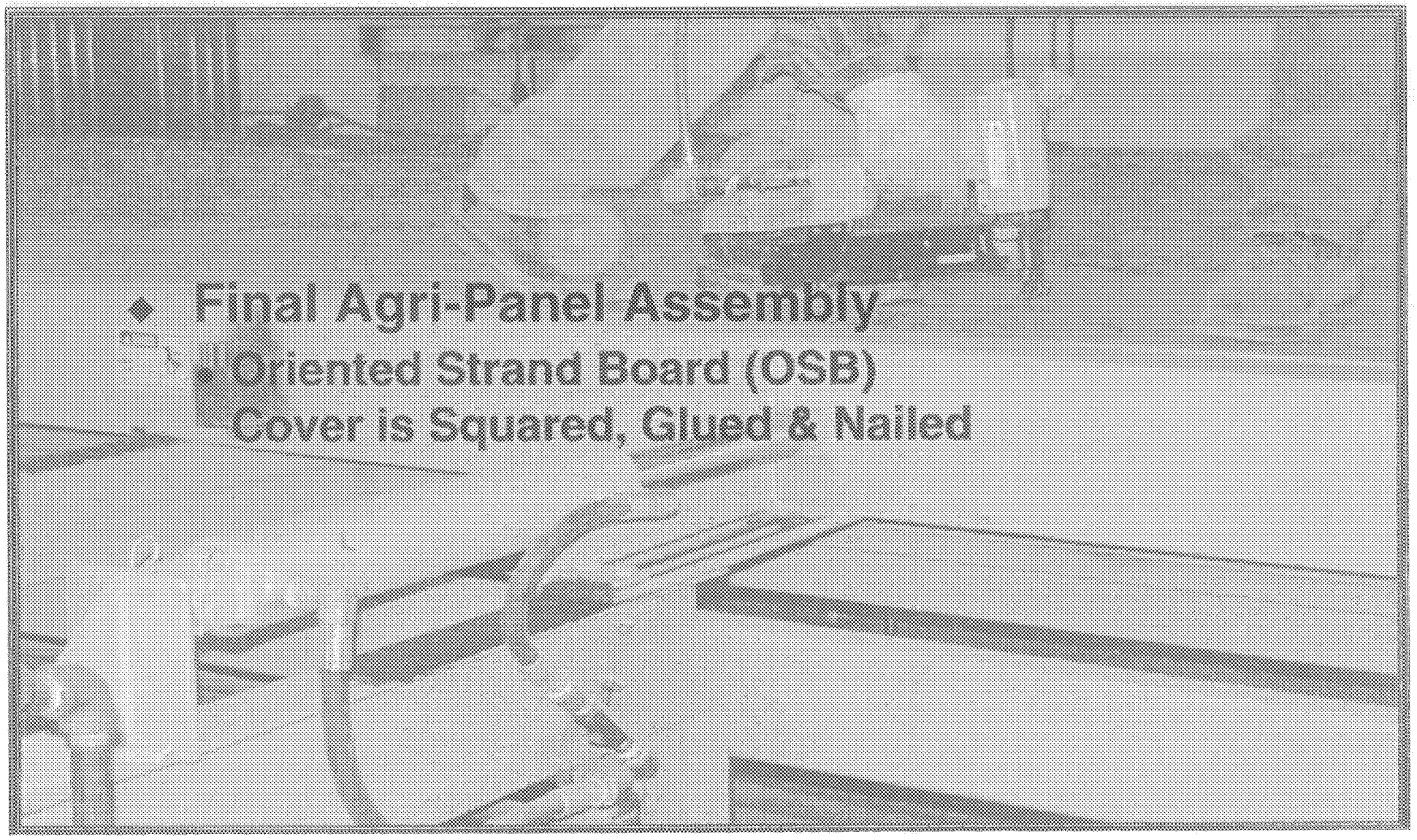
Agri-Panel

Production Process

- Adhesive applied to Profile Edges for Strength & Water Proof Seal
- 3rd Adhesive Layer applied between Agri-Core™ & Top OSB Layer

Agriboard INDUSTRIES

Agri-Panel
Production Process



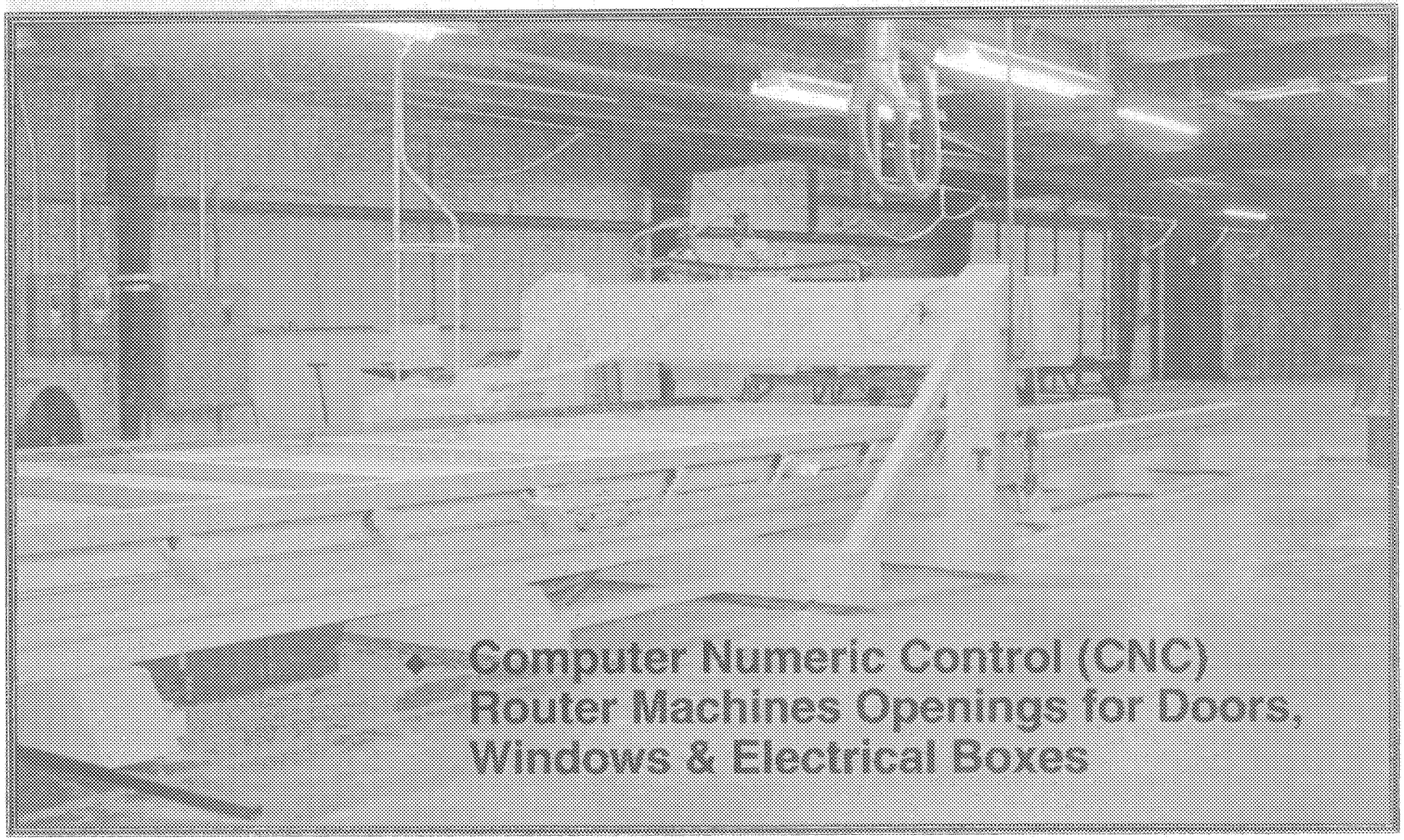
- Final Agri-Panel Assembly
  - Oriented Strand Board (OSB)
    Cover is Squared, Glued & Nailed

Agriboard INDUSTRIES

Agri-Panel
Production Process

Agriboard INDUSTRIES

Agri-Panel
Production Process



- Computer Numeric Control (CNC) Router Machines Openings for Doors, Windows & Electrical Boxes

Agriboard
INDUSTRIES

Agri-Panel
Production Process

Agriboard INDUSTRIES

Agri-Panel

Composite = Superior Properties

- Loadbearing: 8' x 24' vertical or horizontal
  - ASTM E-72 & AC-04 Continuous & Point Loading: Axial, Transverse, Racking
- Curtain Wall on Red Iron is EZ Installation
  - NO Girts and Few X-Braces
- Exact A&E Design Specs & Tolerances
  - Engineered, Manufactured & QC Inspected
- Weight: 4-3/8" @ 9 lbs/sf
  7-7/8" @ 14 lbs/sf

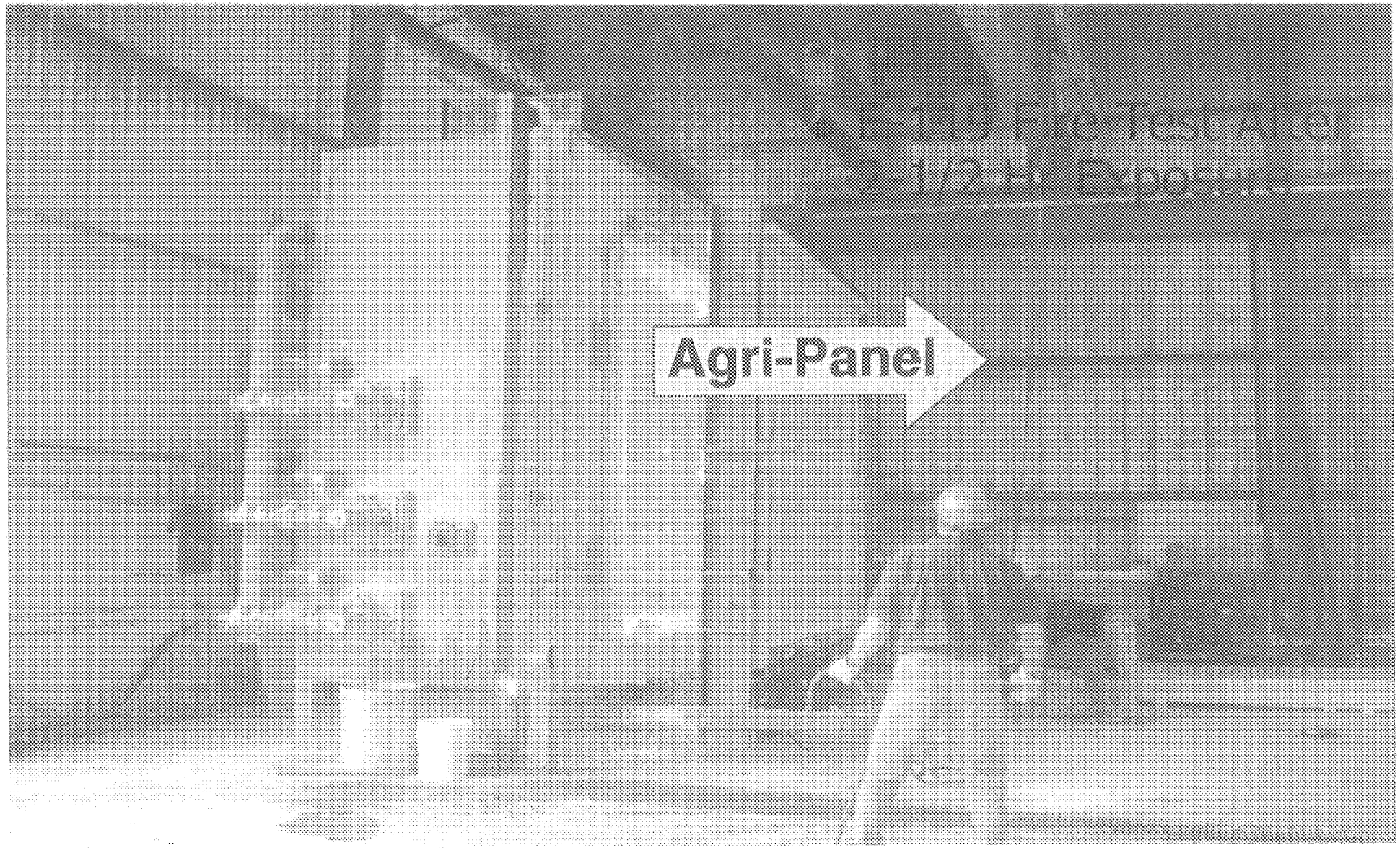
Agriboard INDUSTRIES

Agri-Panel

Composite = Superior Properties

- High Insulation Dynamic R Value
  - 4-3/8" Agri-panel = 13.4
  - 7-7/8" Agri-Panel = 25.4
- Tight Construction
  - 7 Times Less Air Leakage than Stick-Built
- Fire Resistant: 2+ Hr. Rating for Straw Core
  ASTM E119 2-1/2 Hr. Rating for OSB Panels
  - ASTM C729 Sec 14 – Smoldering Combustion

Agri-Panel Fire Rating Test



Agriboard INDUSTRIES

Agri-Panel

Composite = Superior Properties

- Mold, Black Mold & Fungi Resistant
  - ASTM C739 Sec 11
- Moisture Vapor Sorption
  - ASTM C739 Sec 12
- Odor Emission
  - ASTM C739 Sec 13
- Corrosiveness
  - ASTM C739 Sec 9

Agriboard
INDUSTRIES

Examples & Construction Details

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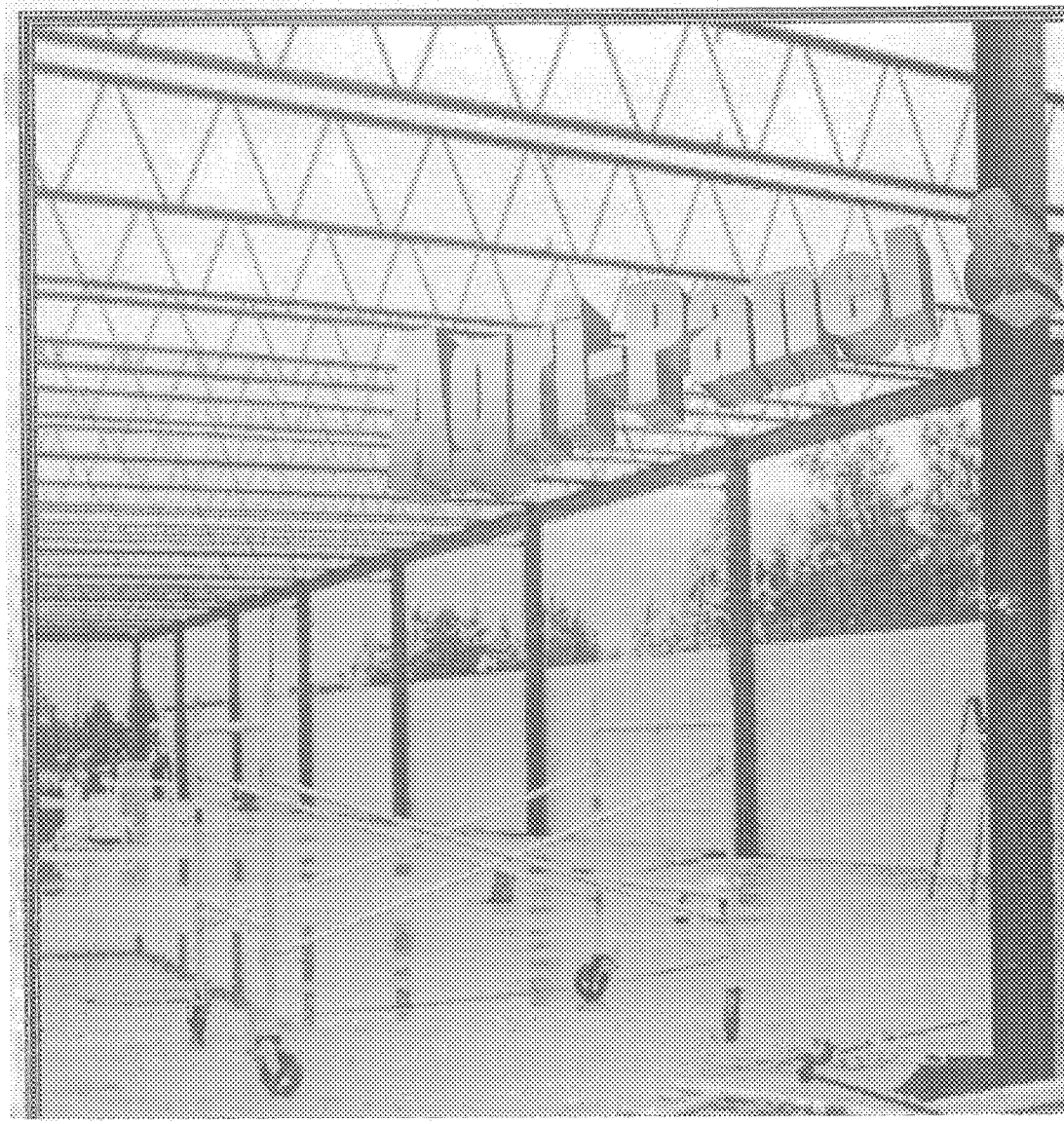
Agri-Panel
Quick Construction



Curtain Wall

Installation

- Carriage Head Bolt thru Agri-Panel to Steel Frame
- Clean Layout - Few Girts Few X-Braces

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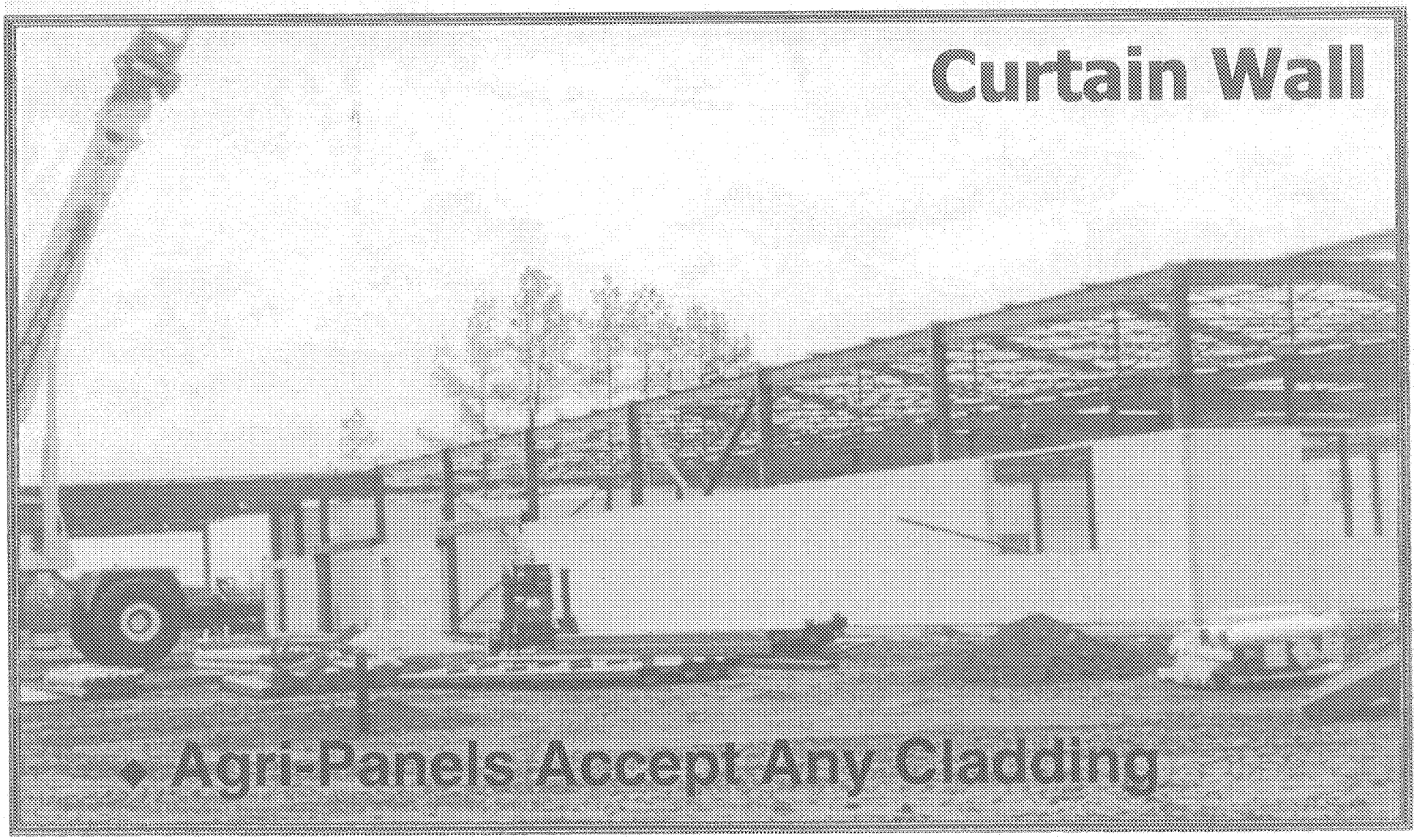
Agri-Panel
Quick Construction



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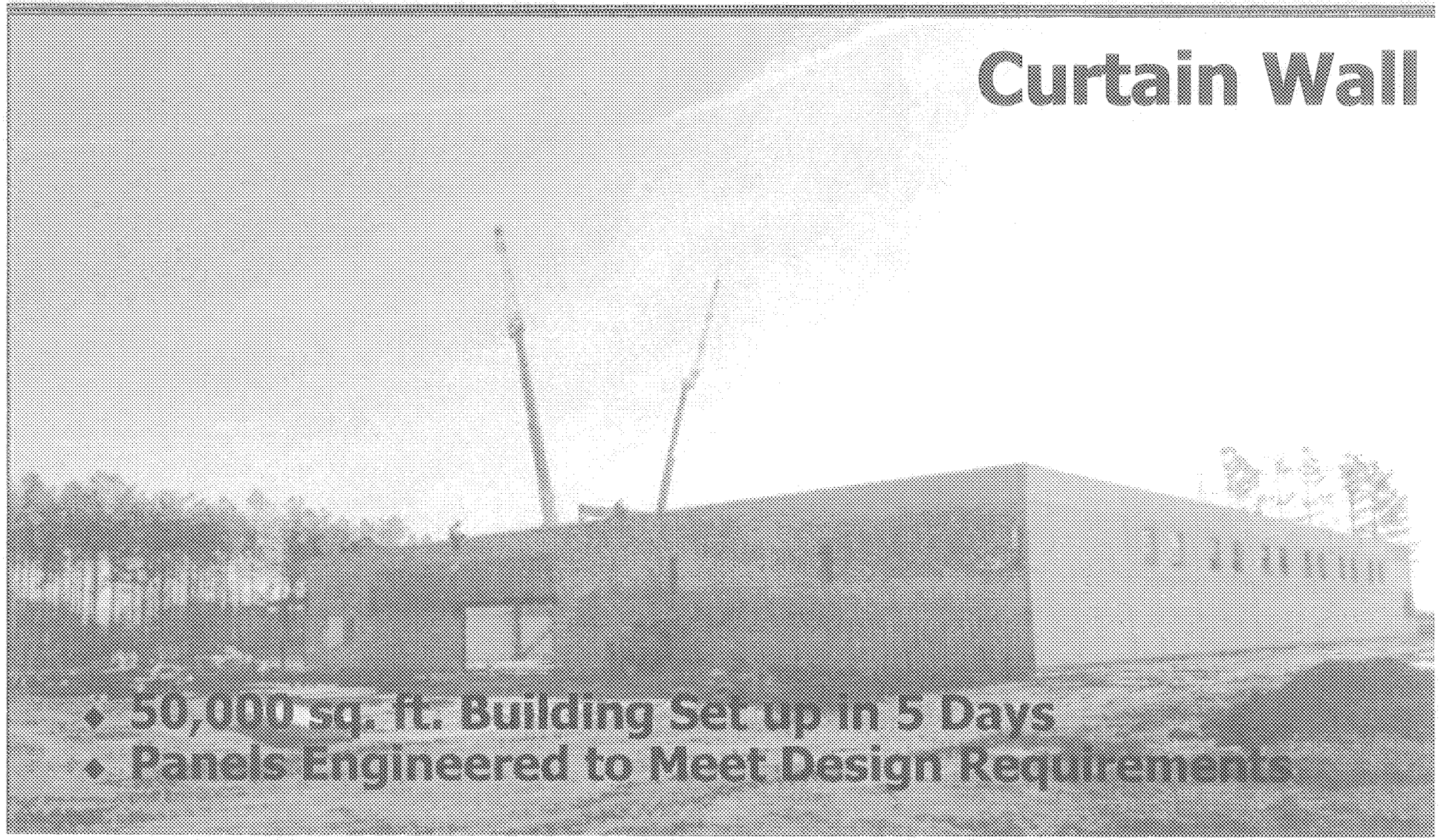
Agri-Panel
Quick Construction

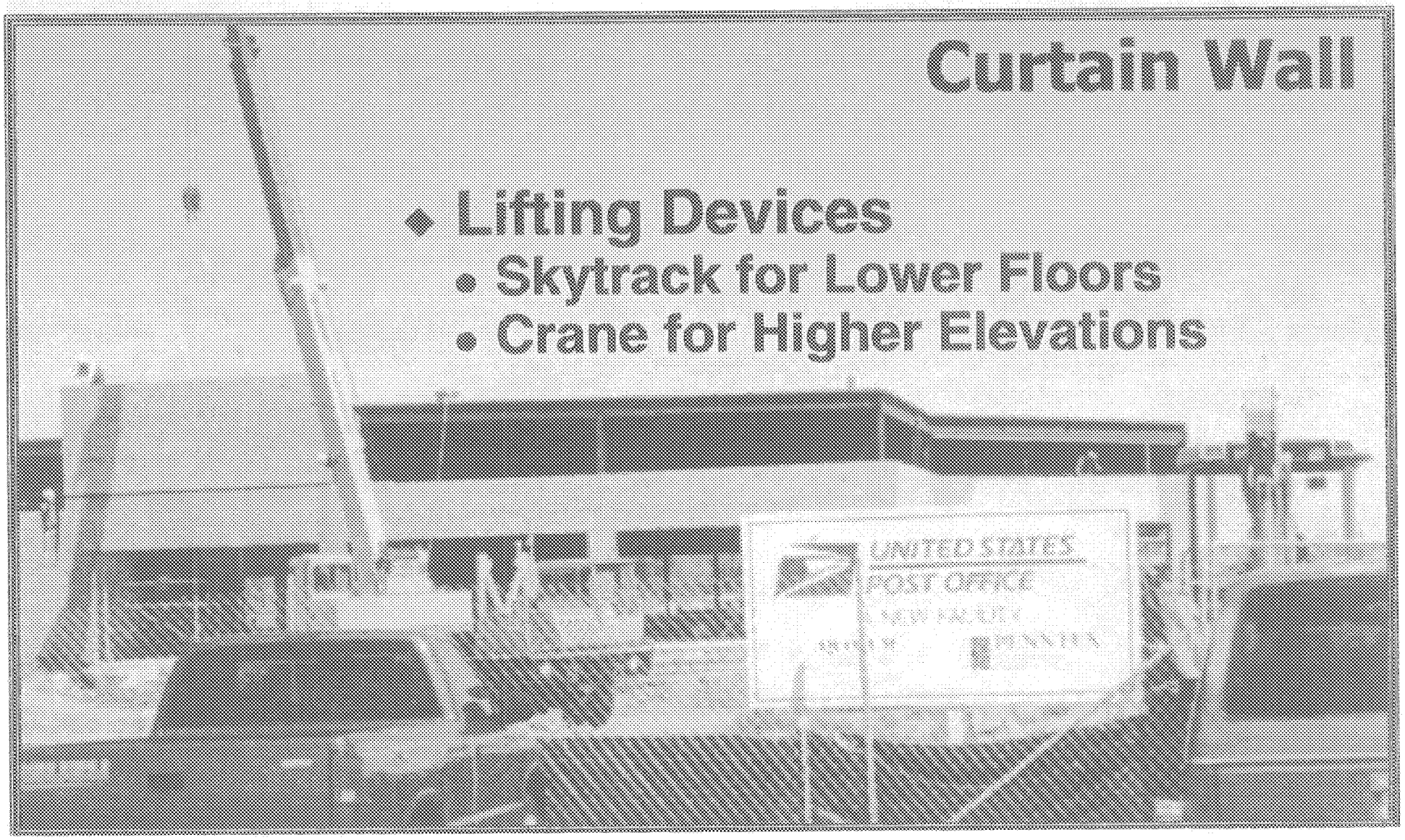
Curtain Wall



- 50,000 sq. ft. Building Set up in 5 Days
- Panels Engineered to Meet Design Requirements

Agriboard INDUSTRIES

Agri-Panel
Quick Construction

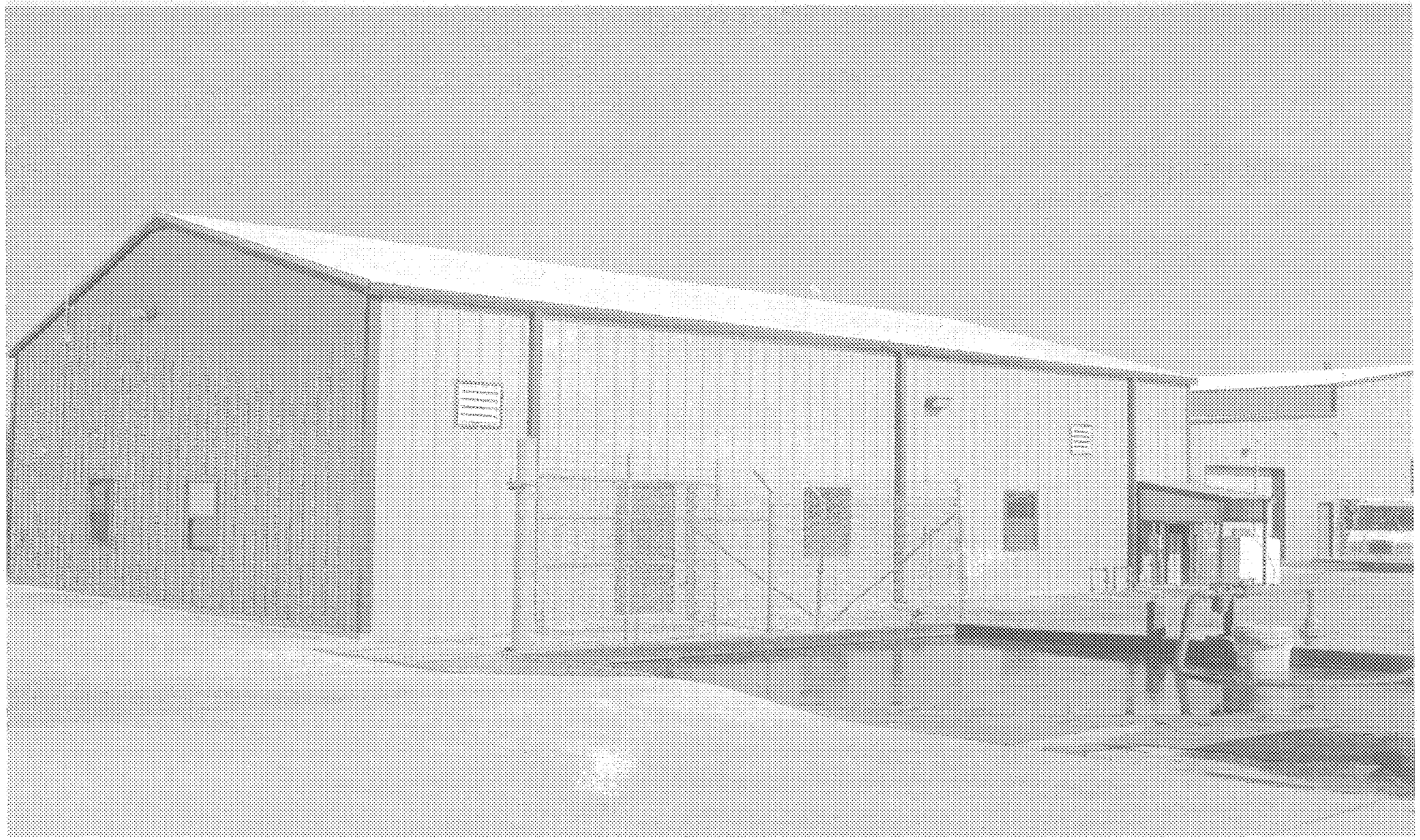


Curtain Wall

- Lifting Devices
  - Skytrack for Lower Floors
  - Crane for Higher Elevations

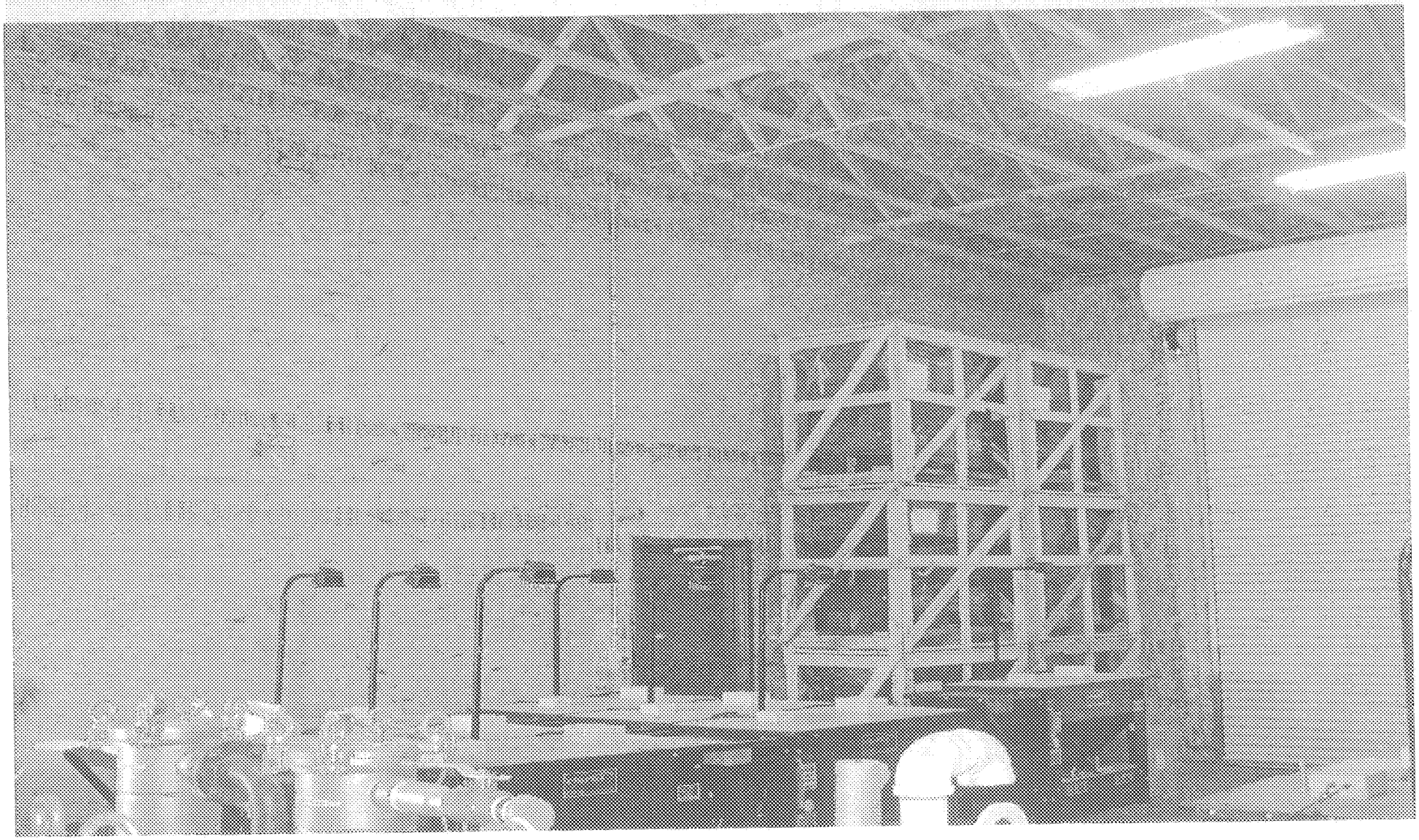
Agriboard
INDUSTRIES

Agriboard at Fort Hood



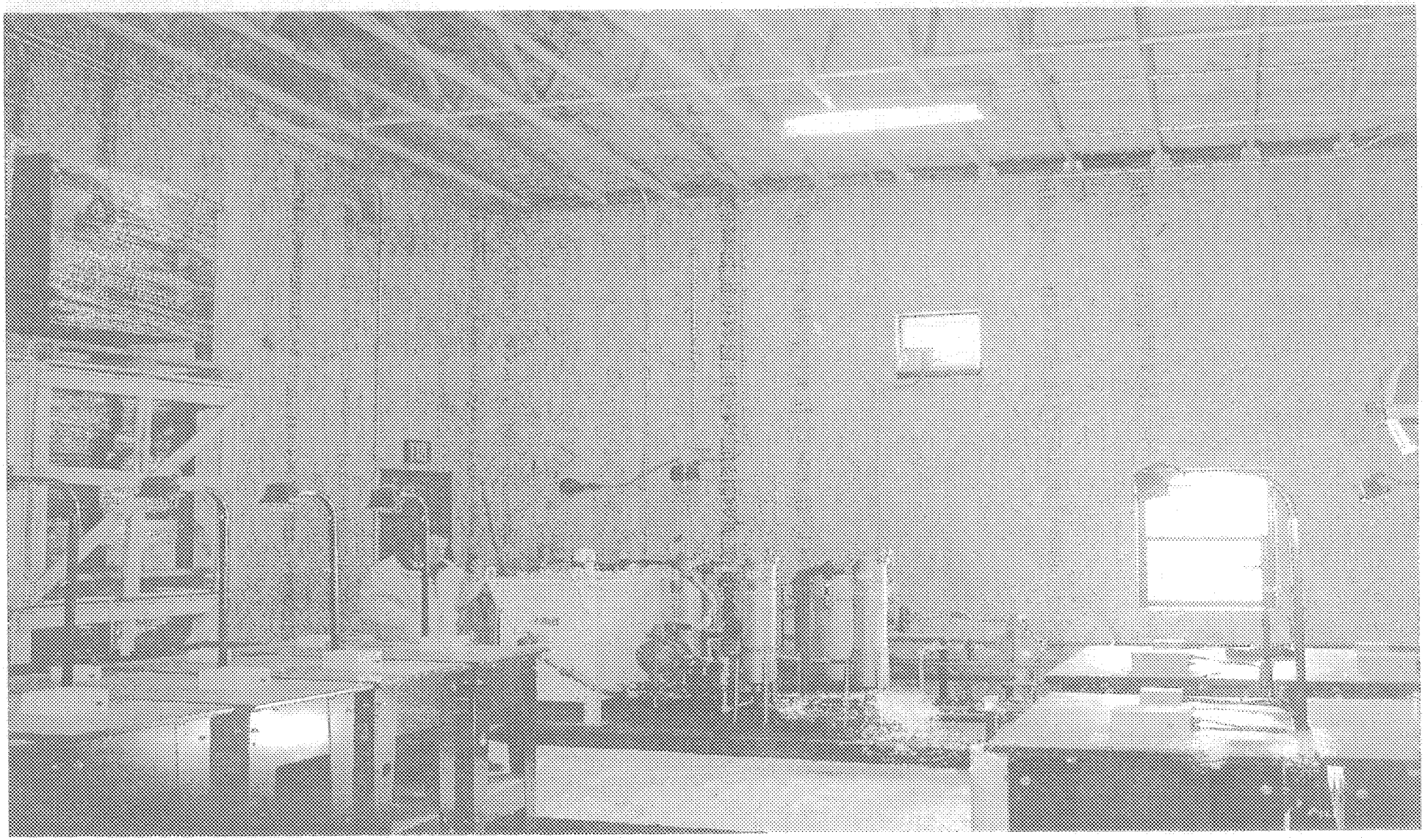
Agriboard
INDUSTRIES

Agriboard at Fort Hood



Agriboard
INDUSTRIES

Agriboard at Fort Hood



Agriboard
INDUSTRIES

Agriboard at Fort Hood

Agriboard Saves $s in Construction Cost

- Agri-Panel TM SAVES YOU TIME AND MONEY IN LABOR MAN-HOURS

Precast Tiltwall	Agri-PanelTM is 3 times faster
Concrete Block	Agri-PanelTM is 8 times faster
Metal Framing - 4"	Agri-PanelTM is 3.5 times faster
Metal Framing - 6"	Agri-PanelTM is 4 times faster
Wood Framing - 4"	Agri-PanelTM is 3 times faster
Wood Framing - 6"	Agri-PanelTM is 4 times faster

Agriboard INDUSTRIES

Sustainable Building for the 21st Century

Agriboard Industries
A Ryan Development Co., L.C.
Transforming Renewable Agricultural Resources into Environmentally Engineered Structural Insulated Panels

Green Building and LEED® in Florida

April 3, 2006

Wendy W. Landry, AIA, LEED AP

Managing Member, GreenTime LLC

GreenTime

Orlando, FL

www.GreenTimeLLC.com

The State of our Planet

All of Earth's major systems are in decline and the rate of decline is increasing…

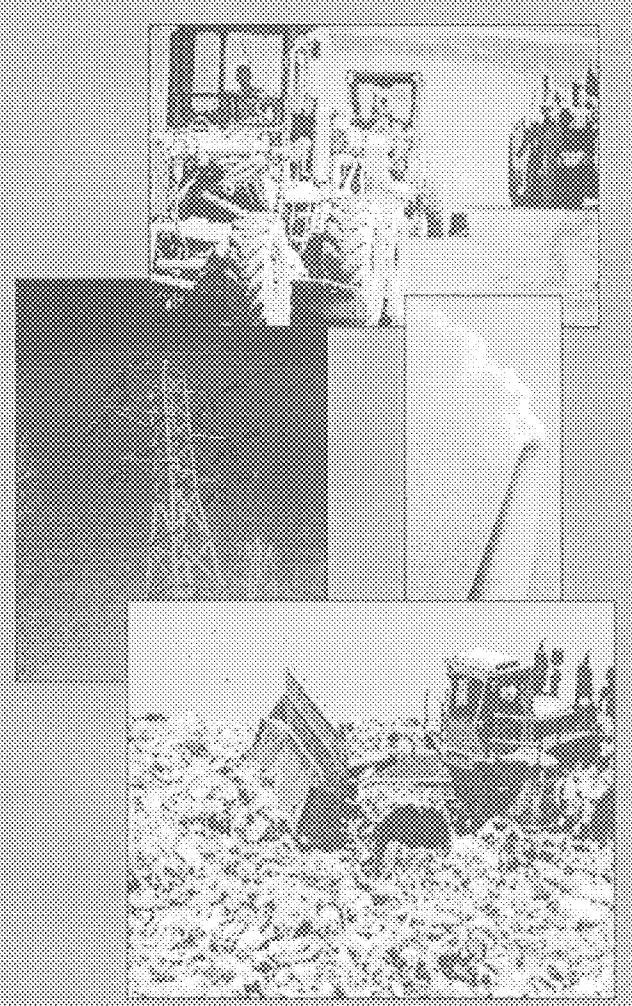
- Deforestation
- Species extinction
- Decline in ability of atmosphere to cleanse itself
- Fish stock depletion
- Soil degradation
- Water quality decline
- Reduction in grain production
- Air pollution
- Ozone depletion
- Global warming

Contributions by Buildings

Commercial, institutional, and residential building and operations in the US account for:

- 36% of total energy use
- 30% of solid waste output
- 30% of raw materials use
- 12% of potable water use
- 30% of greenhouse gas emissions

170,000 commercial buildings are constructed annually in the US!



LEED

LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN

LEED®

Green Building Rating System

A leading-edge system for designing, constructing, operating and certifying green buildings.

The LEED® Rating System

Developed in 1995 by the U.S. Green Building Council

The USGBC is.:

A national nonprofit organization

Consensus-driven

Committee-based product development

Its mission:

To promote the design and construction of buildings that are environmentally responsible, profitable, and healthy places to live and work

Its activities:

Integrate building industry sectors

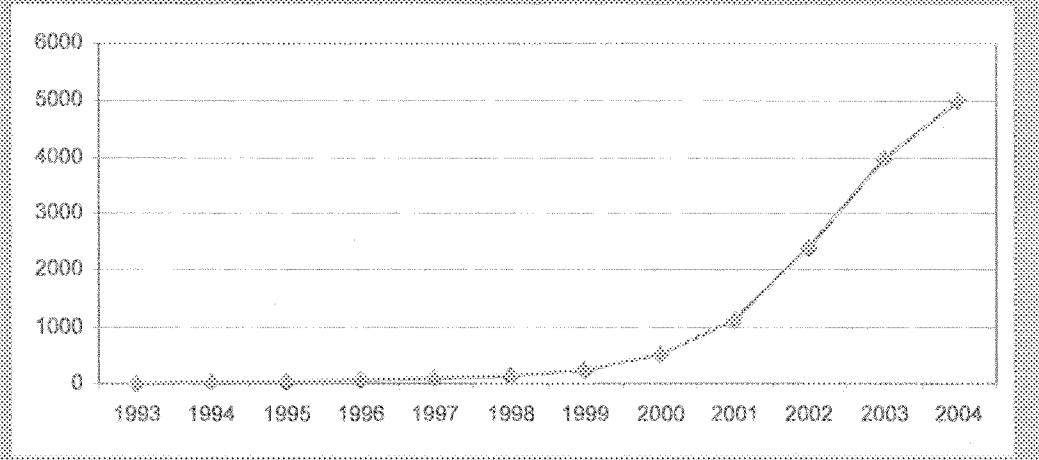
Lead market transformation

Educate owners and practitioners

The LEED® Rating System

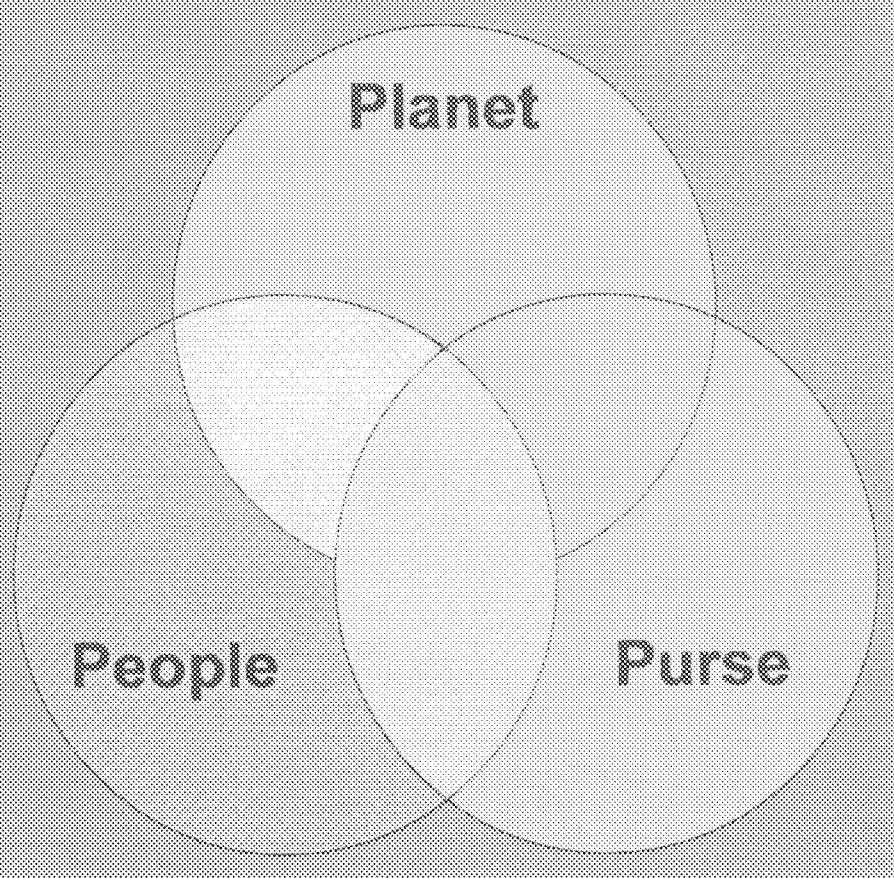
The USGBC's members:

Architecture Firms
Engineering Firms
Contractors
Manufacturers
Government Entities
Real Estate Developers
Financial Institutions
Universities/Colleges
Retail Companies
Nonprofit Associations
Utility Providers
Others



Membership Growth

Benefits of LEED® – "The Three P's"



Benefits of LEED®

Environmental benefits

- ✓ Reduced global warming impacts
- ✓ Minimized ozone depletion
- ✓ Reduced resource extraction impacts
- ✓ Reduced toxic emissions
- ✓ Reduced energy and other impacts of transporting materials
- ✓ Reduced contributions to local and regional air pollution
- ✓ Reduced local and regional water pollution
- ✓ Reduced urban heat islands
- ✓ Protection of biodiversity
- ✓ Increased environmental awareness

Planet

Benefits of LEED®

Health and Productivity Benefits

- ✓ Improved health
- ✓ Enhanced comfort
- ✓ Reduced absenteeism
- ✓ Improved worker productivity
- ✓ Improved learning
- ✓ Faster recovery from illness
- ✓ Increased retail sales

Social benefits

- ✓ Support of sustainable economies
- ✓ Support of companies with socially responsible policies

Community benefits

- ✓ Reduced demand on municipal services
- ✓ Reduced erosion and stormwater runoff
- ✓ Reduced automobile use, traffic congestion, and sprawl
- ✓ Creating "community"
- ✓ Support of local agriculture

People

Benefits of LEED®

First cost savings

- ✓ Reduced infrastructure costs
- ✓ Reduced material use
- ✓ Savings in construction waste disposal
- ✓ Savings from downsizing mechanical equipment

Reduced operating costs

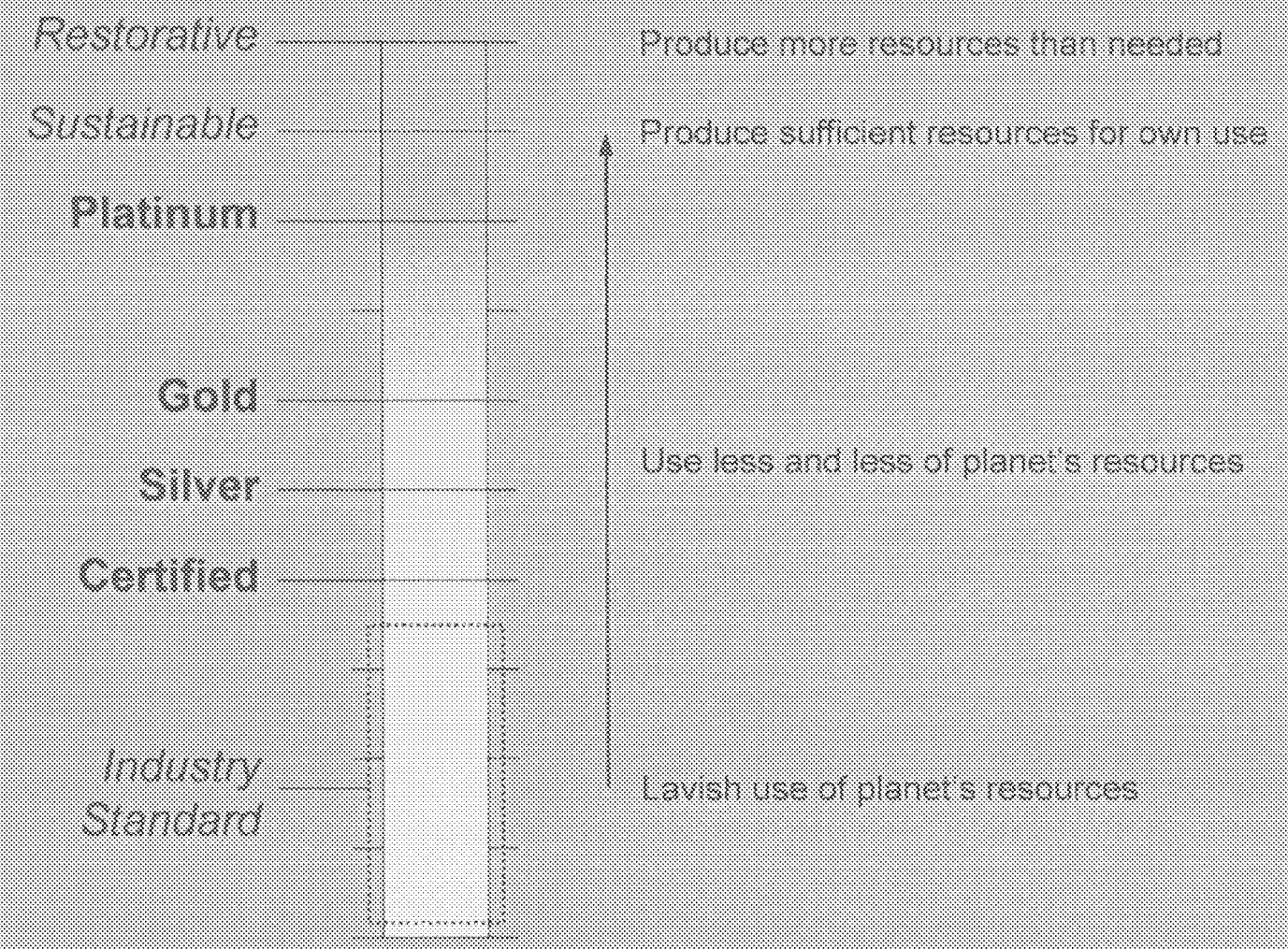
- ✓ Lower energy costs
- ✓ Lower water costs
- ✓ Greater durability and fewer repairs
- ✓ Reduced cleaning and maintenance
- ✓ Reduced cost of churn
- ✓ Lower insurance costs
- ✓ Reduced waste generation within the building

Other economic benefits

- ✓ Increased property value
- ✓ More rapid lease-out
- ✓ Easier employee recruiting
- ✓ Reduced employee turnover
- ✓ Reduced liability risk
- ✓ Staying ahead of regulations
- ✓ Positive public image
- ✓ New business opportunities

Purse

LEED® Levels of Certification



LEED® Categories

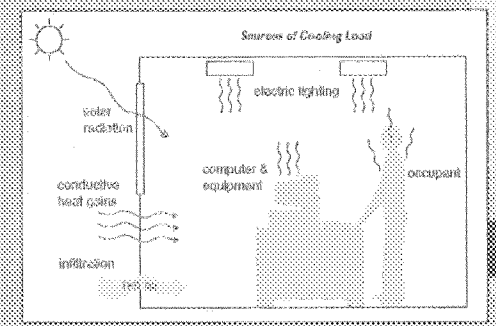
Site	14 pts
Water	5 pts
Energy	17 pts
Materials	13 pts
Indoor Environ-mental Quality	15 pts
Innovation/ Design	5 pts

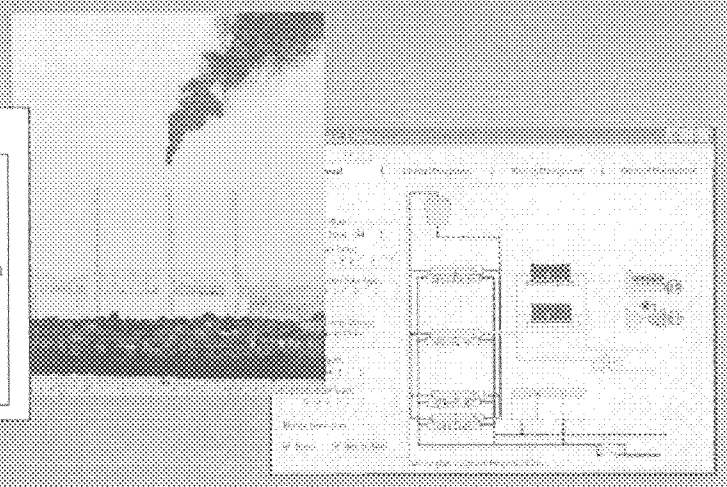
69 total points

ENERGY – Standard Practice

Isolated Design Process

- Engineers are handed a plan and asked to make it work
  - ✓ Plans disregard shape and solar orientation as site plan and building form drivers
  - ✓ Peak load calculations with inaccurate rules of thumb and inflated safety factors due to lack of communication amongst the design team
- Use code prescribed insulation, glazing and equipment efficiencies
- Test and Balance and Start-up/check-out of stand-alone components

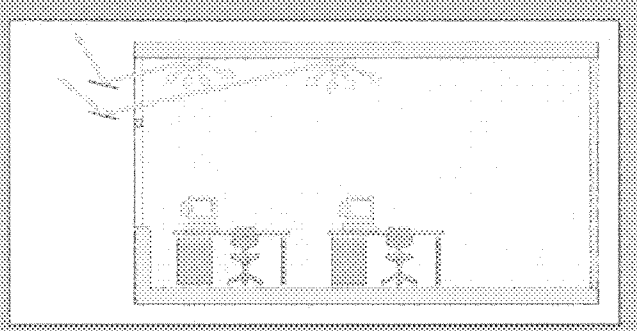


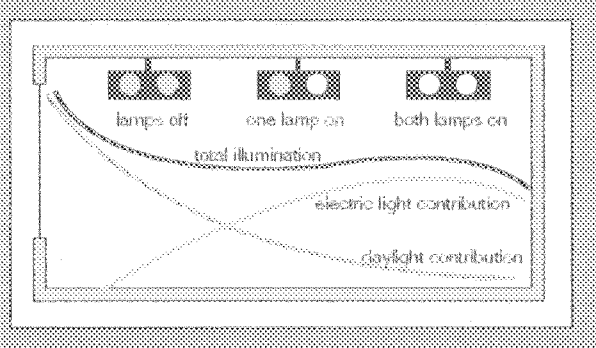


ENERGY – Green Approach

Integrated Design Process with whole building energy analysis

- Bring the entire team to the table to discuss energy
- Determine owner needs
  - ✓ Occupancy patterns
  - ✓ Controllability requirements
- Invest in architecture
  - ✓ Appropriately site, shape and orient buildings
  - ✓ Determine most effective insulation and glazing values for various facades
  - ✓ Run energy simulation options

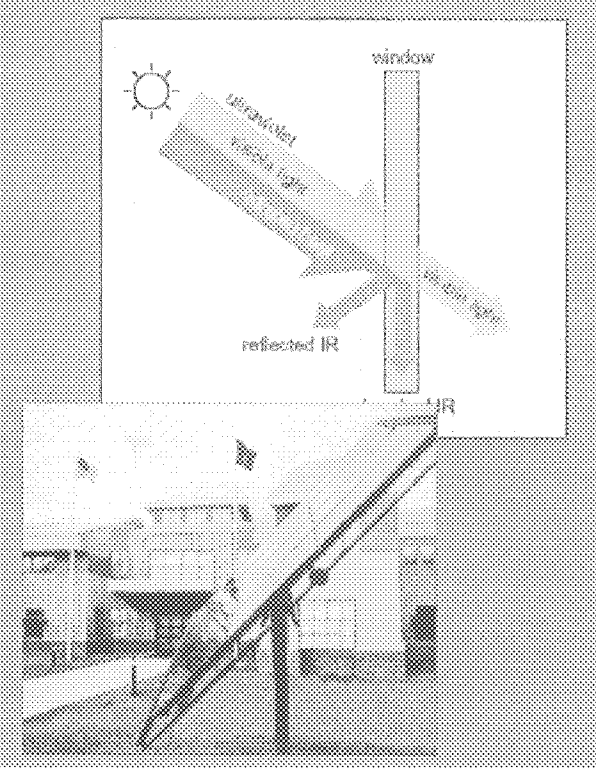




ENERGY – Green Approach

Integrated Design Process with whole building energy analysis

- Set energy parameters for internal loads
  - ✓ Lighting
  - ✓ Equipment
  - ✓ Run energy simulation options
- Keep mechanical systems lean and simple
  - ✓ Accurately define loads rather than inflate them with rules of thumb and safety factors
  - ✓ Select appropriate systems and efficiencies
  - ✓ Run energy simulation options
- Harvest renewable energy
  - ✓ Solar, wind and purchased green power
- Continue to monitor and calibrate



ENERGY – Green Approach

Commissioning: Ensuring building systems operate as intended

- Can design the most energy efficient building in the world, but without commissioning – it may never operate at intended efficiency
- Consider how much testing goes into everyday products before they are put on the market… a building is a one of kind custom product
- Commissioning provides testing of the building systems and works out bugs prior to occupancy
- Commissioning is not standard practice!

Commissioning Benefits:

✓ Improve Indoor Air Quality (i.e. ensure ventilation systems working properly)

✓ Decrease maintenance costs (i.e. training personnel)

✓ Increase efficiency 5% to 10% per the USGBC (many times commissioning will pay for itself in a matter of months)

✓ Less warranty claims (building is working right the first time)

WATER – Green Approach

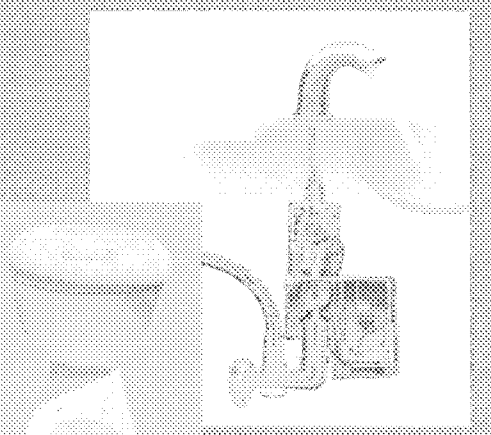
- Allow water to infiltrate before it becomes stormwater
  - ✓ Porous pavement
  - ✓ Vegetated swales
  - ✓ Green roofs
  - ✓ Eliminating retention ponds saves site area
  - ✓ Save cost of future treatment plants?

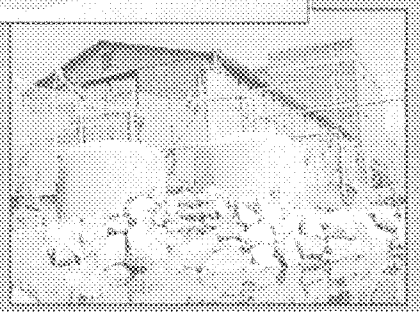
- Minimize or eliminate irrigation
  - ✓ Minimize or eliminate turf grass
  - ✓ Use native plants
  - ✓ Xeriscape
  - ✓ Use non-potable water for irrigation

WATER – Green Approach

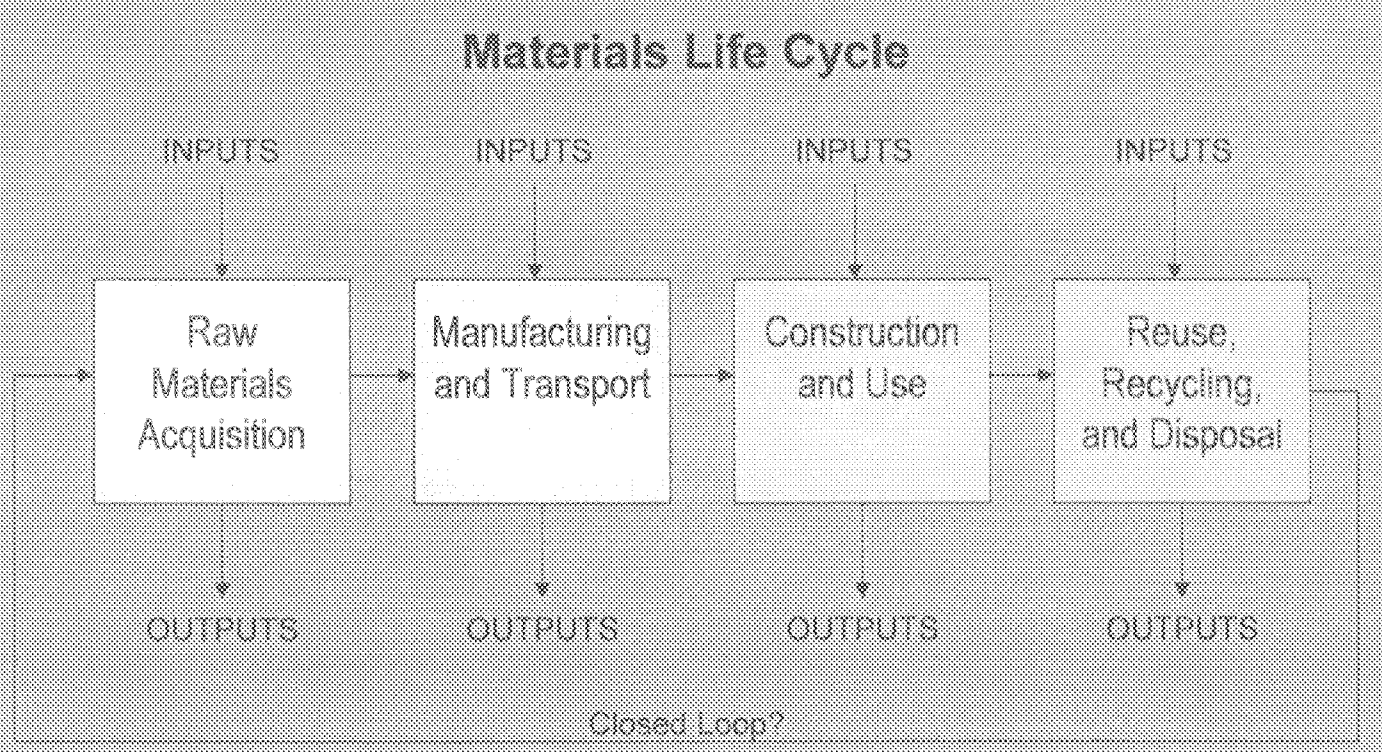
- Use water conserving plumbing fixtures
  - ✓ Waterless urinals
  - ✓ Dual flush toilets
  - ✓ Pressure assist toilets
  - ✓ Faucet controls
  - ✓ Low flow showers

- Rainwater Harvesting: Replacing potable water with rain water
  - ✓ Why do we throw water away and then pay to bring it back?
  - ✓ Can pay back in less than 10 years





MATERIALS – Green Selection Approach



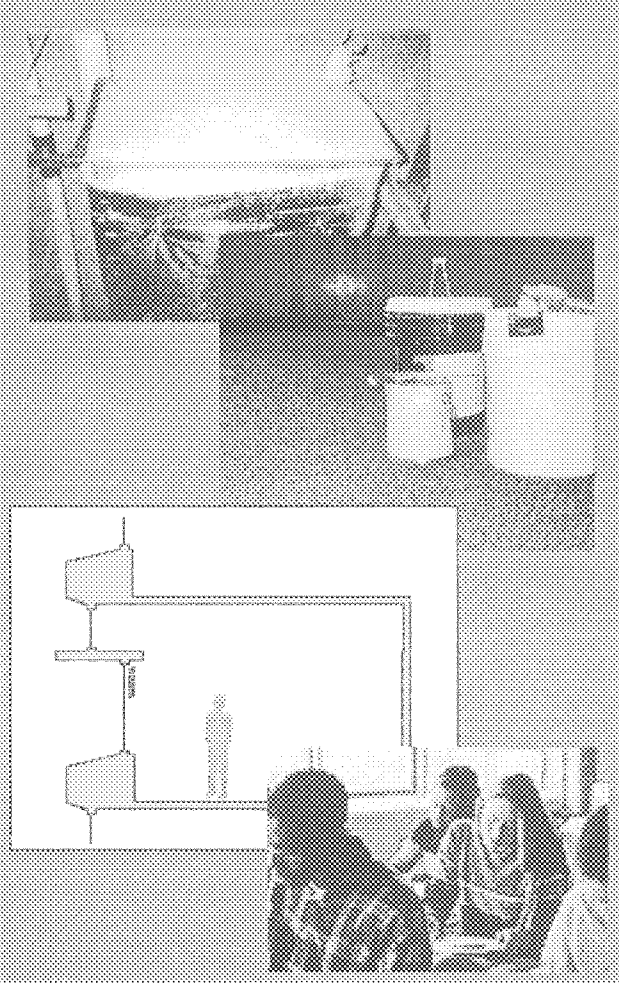
Source: Building Green & Scientific Consulting Group

MATERIALS – Green Approach

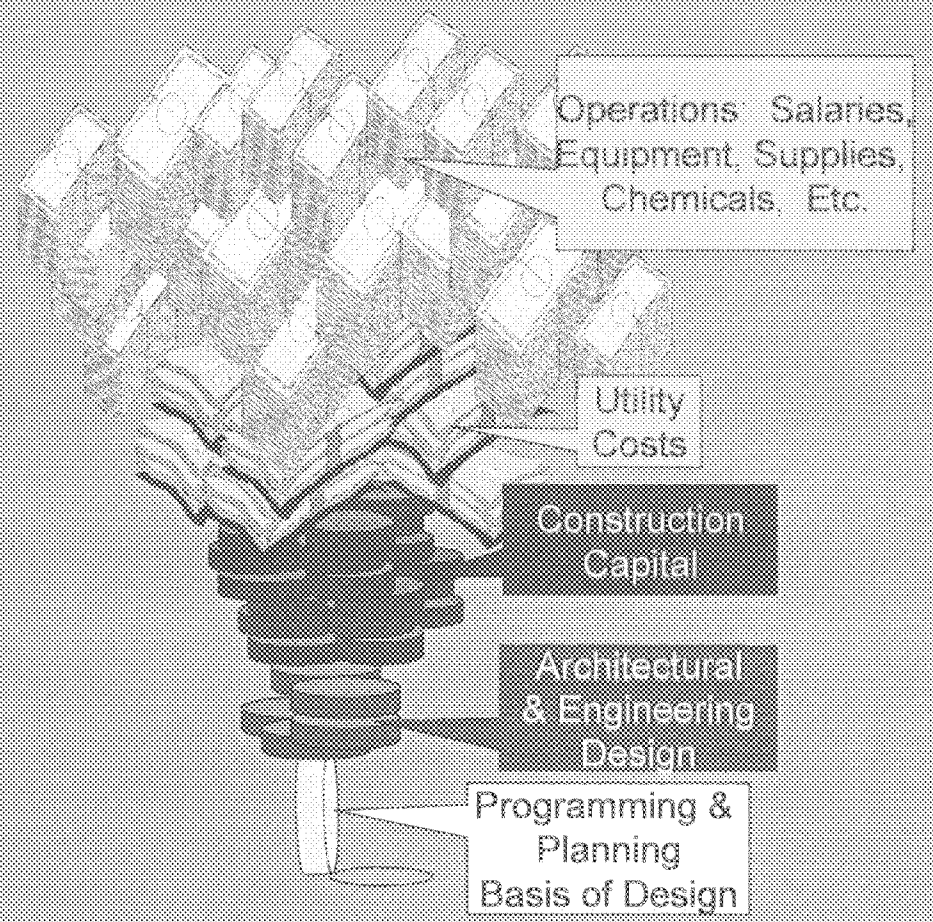
- Use bio-based and rapidly renewable products
  - ✓ Agrifiber composite wood – byproduct of agriculture
  - ✓ Linoleum – linseed oil from flax plants
  - ✓ Cotton
- Use reclaimable products
  - ✓ Ceiling tile reclamation program
  - ✓ Carpet reclamation programs
- Use recycled content products
  - ✓ Flooring – glass, rubber, carpet backing
  - ✓ Fly ash in concrete – byproduct of coal combustion
  - ✓ Synthetic gypsum board – byproduct of coal combustion
- Construction Waste Management
  - ✓ Divert construction waste from landfill through recycling or salvage

INDOOR ENVIRONMENTAL QUALITY – Green Approach

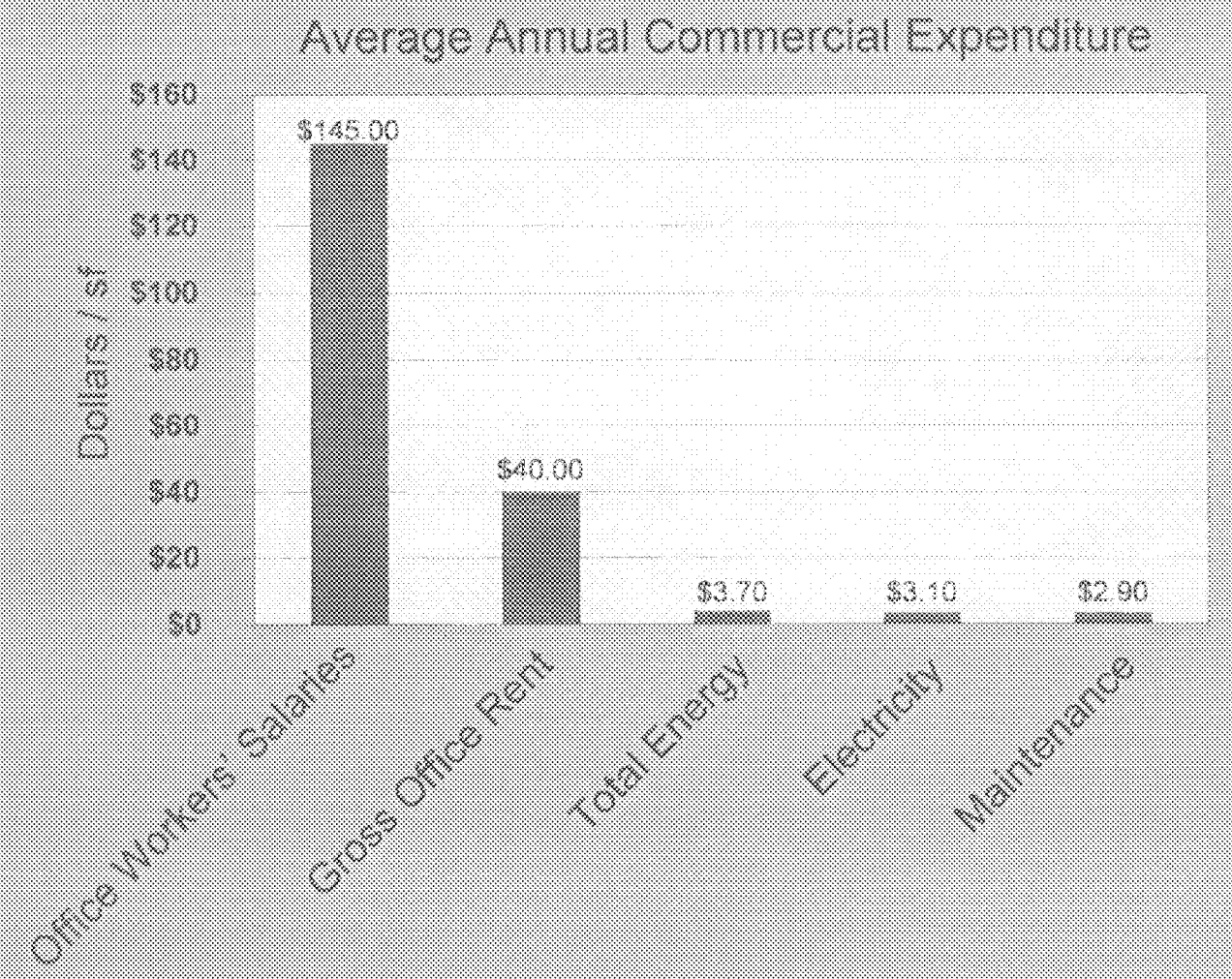
- Air Quality
  - ✓ Low-emitting materials
  - ✓ Protect ducts during construction
  - ✓ Green housekeeping
  - ✓ Air quality monitoring
- Occupant comfort
  - ✓ Thermal and acoustic comfort
  - ✓ Increased controllability
- Daylight and Views
  - ✓ Increased student performance
  - ✓ Increased retail sales
  - ✓ Increased worker productivity



Life Cycle Cost



Life Cycle Cost



Source: USGBC

States requiring or encouraging LEED®

Arizona

California

Maine

Michigan

Nevada

New Jersey

New York

Oregon

Pennsylvania

Washington

Cities and counties encouraging green building

Boston

New York

Portland

Phoenix

Salt Lake City

San Francisco

Scottsdale

Sarasota Co.

Miami/ Dade

Gainesville

Florida incentives

- Sarasota County *(http://sarasota.extension.ufl.edu/SS/SS.html)*

and

- City of Gainesville *(www.cityofgainesville.org/gov/municode.shtml)*
  - ✓ Private "green" buildings: fast-track building permits and a 50% reduction in the cost of building permit fees
  - ✓ Public buildings: must be built to "green" standards

- Miami - Dade County *(www.miamidade.gov/bldg/pdf/Ordinance05115.pdf)*
  - ✓ Fast-track building permits
  - ✓ Encouragement of "green" standards
  - ✓ Private "green" buildings: qualify for Targeted Jobs incentives
  - ✓ Private "green" buildings that incorporate solar thermal, photovoltaic, fuel cell, or cogeneration energy technology: qualify for an additional incentive

LEED® Certified Projects

Over 300 Certified Projects in the world

Eight Certified Projects in Florida

- Lynn Business Center, Stetson University
- Rinker Hall, University of Florida
- Navy Federal Credit Union, Pensacola
- Happy Feet Plus, Clearwater
- McGuire Center, University of Florida
- North Sarasota Public Library, Sarasota
- Twin Lakes Park, Sarasota
- Whole Foods Market, Sarasota

Thousands of Registered Projects!

Over 60 Registered Projects in Florida

LEED® in Florida

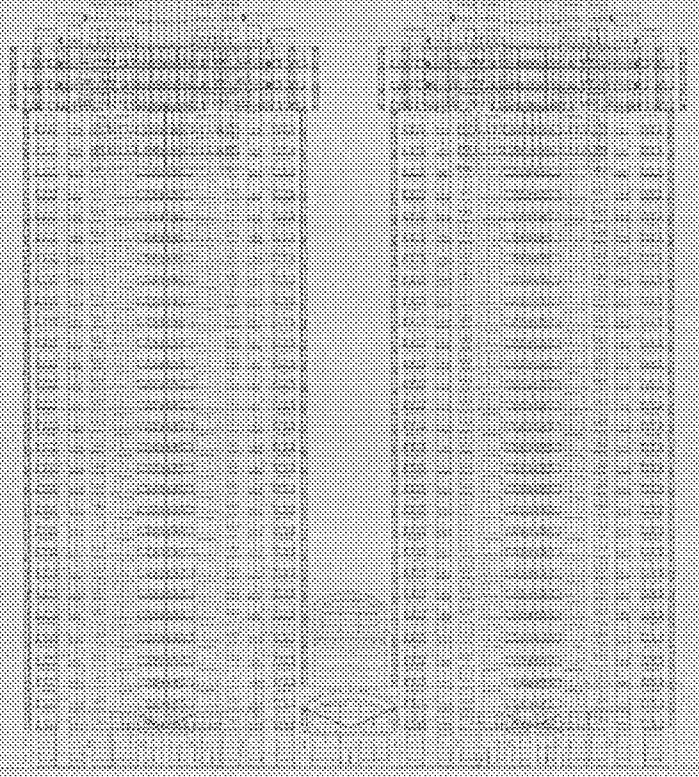
Stetson University Lynn Business Center (73,000 sf)

- First LEED certified building in Florida
- Preferred parking for carpool riders
- 82% of construction waste was recycled – equivalent to 66 million pounds
- 20% of the building materials manufactured within 500 miles of the site
- Electricity consumption reduced from 2.39 kw/sf to 1.39 kw/sf
  - ✓ $15-20,000 annual electricity savings
  - ✓ Annual reduction of 605 tons of CO_2
- Additional monitoring points provided on building systems
  - ✓ Owner can verify predicted building performance
  - ✓ Maintenance staff can maintain optimal building performance

LEED® in Florida

Downtown Orlando High Rise Residential (500,000 sf)

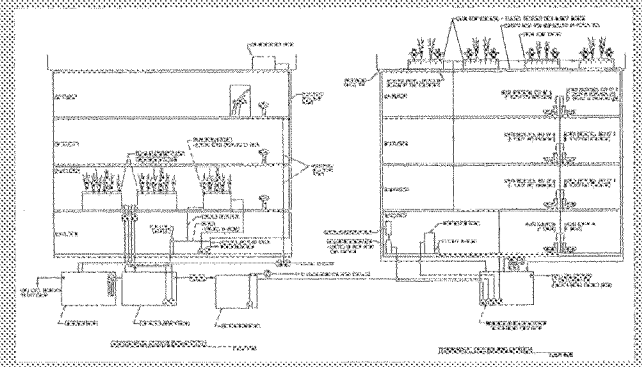
- Vegetated roof
  - ✓ Avoids heat islands
  - ✓ Reduces stormwater runoff
  - ✓ Provides resident amenity
- Water savings of 2.7 million gallons per year vs. code
  - ✓ Dual flush toilets
  - ✓ Ultra low flow lavatories
  - ✓ Low flow showers
- Building systems commissioning
- Low emitting materials
- Carbon dioxide monitoring

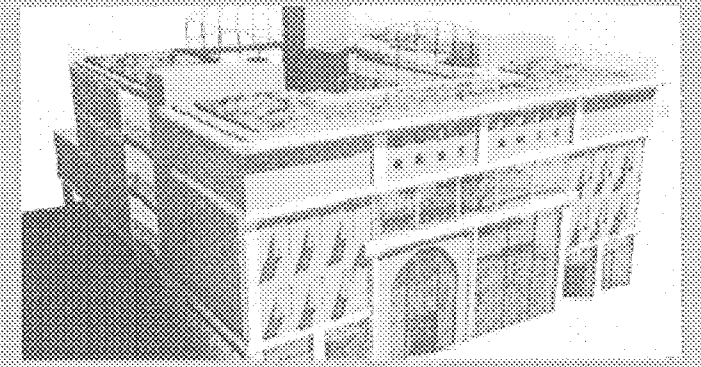


LEED® in Florida

Vive Verde Office Building, Lake Worth (30,000 sf)

- 160,000 gallon annual water savings
  - ✓ Building should use 40k gallons per year in lieu of 200k
  - ✓ Rainwater, gray water and condensate collection
- 25% more efficient than ASHRAE 90.1-1999 national energy standard
  - ✓ $11,000 per year savings
- Striving for 75% construction waste management
- Underfloor air conditioning system
  - ✓ Improved ventilation effectiveness and controllability

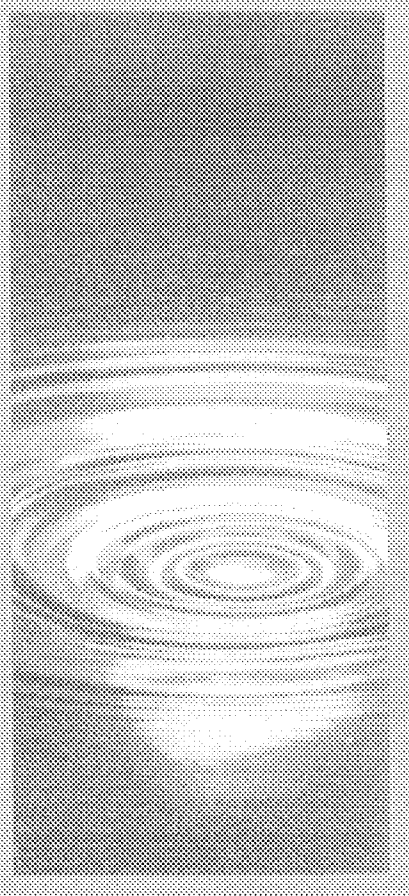




LEED® in Florida

Discovery Techcenter II (60,000 sf)

- Florida's first LEED-CS building
- Precertified Gold
- Preferred parking for fuel efficient vehicles
- Rainwater cistern to flush toilets
  - ✓ Building interior to use 50k gallons per year in lieu of 500k
  - ✓ 450,000 gallons annual water savings
- Green power
- Indoor Air Quality management during construction



Other green building rating standards

- LEED
  - ✓ New Construction and Major Renovations
  - ✓ Core and Shell
  - ✓ Existing Buildings
  - ✓ Commercial Interiors
  - ✓ Homes
  - ✓ Neighborhood Developments
- Florida Green Building Coalition
  - ✓ Neighborhood Development Standard
  - ✓ Home Standard
  - ✓ Commercial Standard
  - ✓ Government Standard
- Green Globes
  - ✓ Commercial Standard

Questions?