



Employer Involved Housing – A Look to the Future

**Temporary Labor Camp
Farm Labor Housing**



Past

- Over many decades farm labor housing was simply part of farming – Cahodas Orchards alone employed/housed 1,400
- Mechanization decreased need – maybe 300 in county today (Manistee)
- Media frenzy on only negative stereotypes



Source: esty.com

Statutory Required Housing

Agricultural Recruitment System 20 CFR 653.501(c)(3)

(vi) **The availability of no cost** or public housing which meets the Federal standards and which is sufficient to house the specified number of workers requested through the clearance system. This assurance must cover the availability of housing for only those workers, **and when applicable, family members** who are not reasonably able to return to their residence in the same day.

Statutory Required Housing

Temporary Agricultural Employment 20 CFR 655.122(d)

(1) The employer **must provide housing at no cost** to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day...

- (i) Employer-provided housing
- (ii) Rental and/or public accommodations

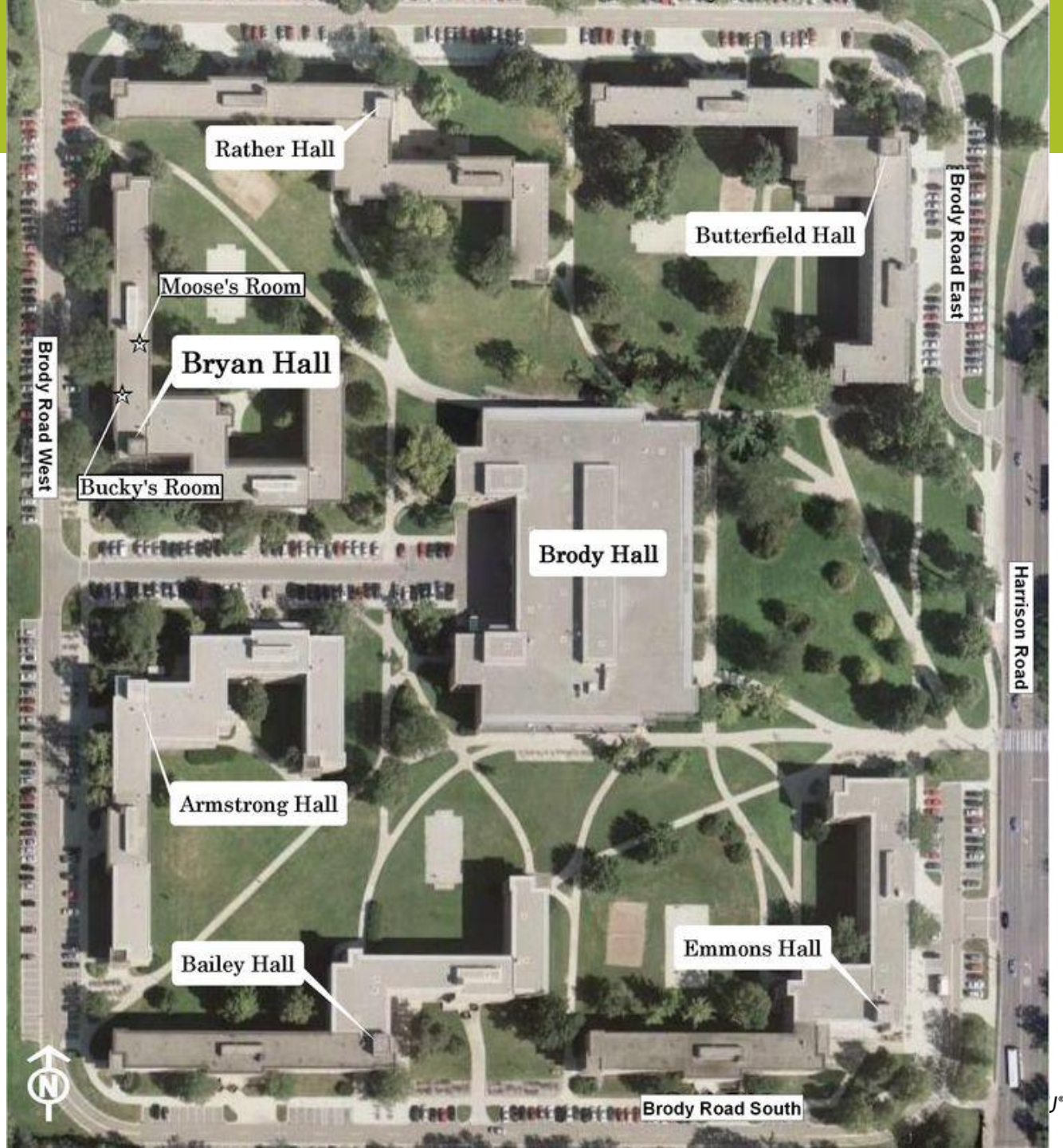
Housing Rules

- MI Agricultural Labor Camp – Licensing
 - 5 or more workers
- MIOSHA – Part OH 511 Temporary Labor Camps
 - Applies to all camps regardless of size
 - Enforcement generally by complaint
- MSPA – Housing Disclosure(s)
 - US DOL enforcing “OSHA” standards
- Local codes?

Housing Rules

- MSPA – Each person who owns or controls housing for any migrant agricultural worker must ensure it complies with all substantive Federal and State safety and health standards applicable to such housing
 - Migrant – a person who is employed in agricultural employment of a **seasonal or other temporary nature**, and who is required to be absent **overnight from his permanent place of residence** 29 CFR 500.20(p)

Dorm Rooms
are 174 sq.
feet, MSU
has allowed 4
in a room
OSHA code
allows 2



Farm Labor Housing

To Be Zoned Out Of Existence?

Zoning – Local Control

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by other state or federal laws such as the Fair Housing Act



Source: MDARD

This style housing
deemed unacceptable
in Comstock Township

“Right to Farm”? – State

- Michigan’s “Right to Farm Act” **does not cover employment related housing**
- Provide farmers with “nuisance” protection
- Seeks “environmental protection of natural resources” through “GAAMPS”
- Conformance to GAAMPs provides umbrella protection from nuisance litigation

Fair Housing Act – Federal

- Prohibits state and local land use and **zoning laws, policies, and practices** that discriminate based on a characteristic protected under the Act
 - Race, color, religion, sex, disability, familial status, or national origin
 - Established by the Supremacy Clause of the U.S. Constitution

DOJ Violative Zoning Practices - Federal

- Denying multifamily housing for concerns residents are of a protected class
- Restrictions on housing because of alleged public safety concerns
- Unequal enforcement



Source: Public Advocates

No Intent to Discriminate?

- **State or local governments** may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic DOJ
- **Disparate Impact** – Does the adverse effect of the policy or practice fall disproportionately on a race, color, or national origin group?

<https://www.justice.gov/crt/fcs/T6Manual7#E>

What Has and Is Happening?

- *Frens* – “Consistent Applicable Provisions”
 - “The approval of plans or the issuance of a permit pursuant to this code which involves the construction, alteration, or renovation of a building, structure, or premises, the use of a site, or the installation or alteration of equipment **does not relieve the person receiving the approval or permit from complying with all consistent applicable provisions** of building and construction laws, zoning requirements, and other state and local statutes, charters, ordinances, rules, regulations, and orders.” MCL 333.1203
 - “Although the rules do not contain a provision that parallels the location limitation in the zoning ordinance, this rule demonstrates that **local control of agricultural labor camps is still permitted.**” Court decision

Application of *Frens* – Michigan

- Many local municipalities have/are using case to exclude “migrant” housing through restrictions not placed on other housing
- Court ruled on if “the state regulatory scheme for migrant housing *totally preempts* local zoning ordinances”
- Court did not rule on “*partial preemption*”

Application of *Putney* – Michigan

- Village of Elberta was deemed to have excluded housing:

“the Village of Elberta has no constitutional authority, in fact, it would offend the constitution of the state of Michigan and the United States to put a condition on that agricultural workers cannot live in apartments in the Village of Elberta.”

Application of *Putney*

“...and conditions the village imposes on a special use permit for apartments have to be lawful. You can't have exclusionary zoning that says implicitly that the village considers certain kinds of workers, certain kinds of laborers, as somehow less desirable than other kinds of people who work and want to live in the village.”

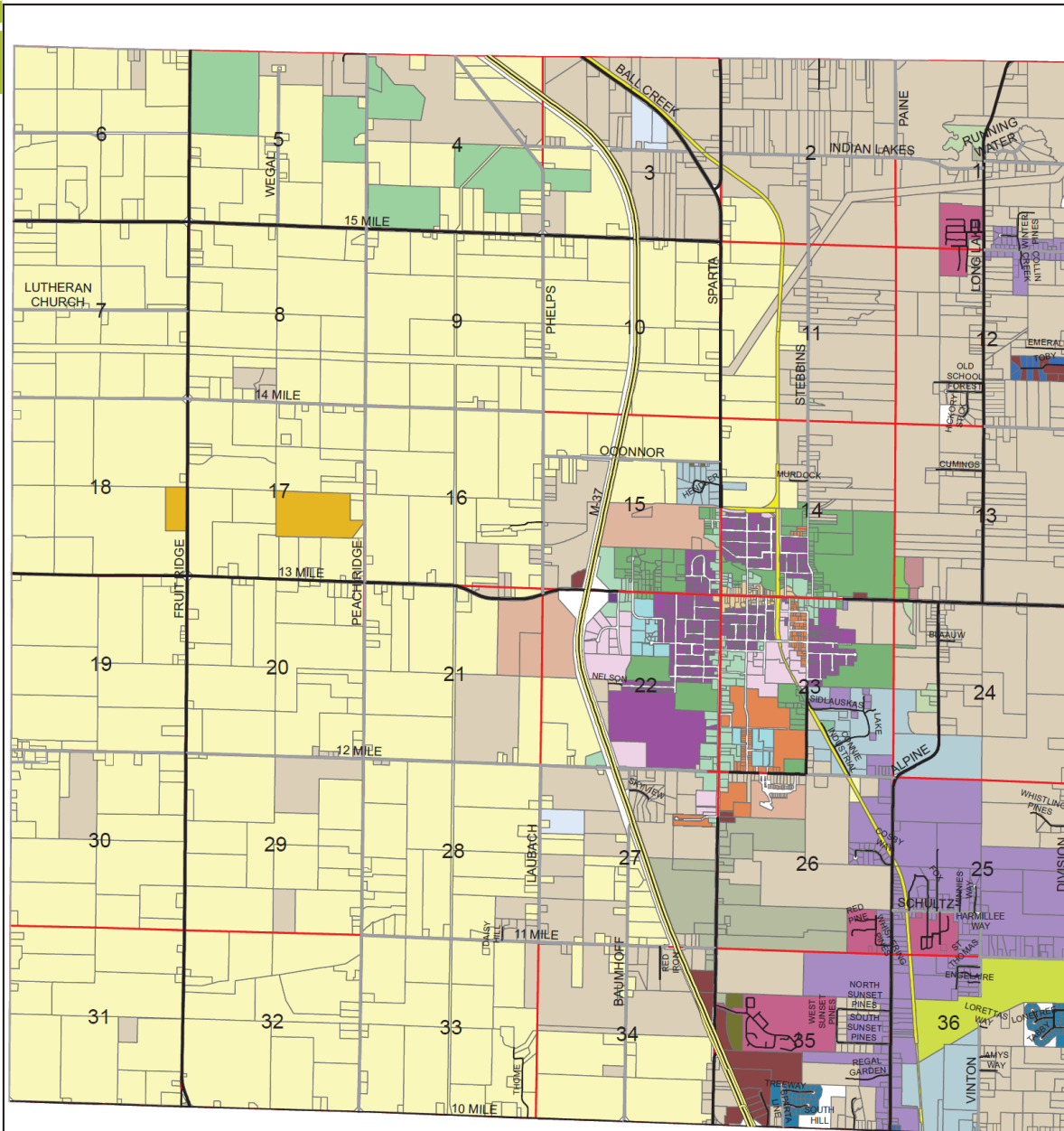
Impact

- Many municipalities have used *Frens* to adopt very restrictive ordinances
- “Ordinance consultants” have/are using cut & paste procedures without ordinance review
- Even heavy ag municipalities have adopted restrictions

Sparta Township – Proposed Language

- Migrant housing is allowed only as an accessory use **in agricultural zoning districts**
- May only occupy April 1 to November 1
- Must be 500' from property line or existing residence Ordinance 8.13

Zoning Districts



Legend

A1*	AG1	C-2 CONDITIONAL	GC	R1	R4	VCB	VPUD	VR3
A2	AG2	C1	I1	R2	RR	VGC	VR1	VR4

Source: Sparta Township



40 Acre Parcel – As Proposed

$$1,320 \text{ ft} \times 500 \text{ ft} \times 2 = 1,320,000 \text{ ft}^2$$

$$320 \text{ ft} \times 500 \text{ ft} \times 2 = \underline{320,000 \text{ ft}^2}$$

$$\text{Setback area} = 1,640,000 \text{ ft}^2$$

$$\text{Buildable area} = 102,400 \text{ ft}^2 (320' \text{ sq})$$

$$\text{- WPS setback } 100' = \underline{88,000 \text{ ft}^2}$$

$$\text{Total Buildable} = 14,400 \text{ ft}^2 (120' \text{ sq})$$

$$\text{- Building sep } 30' = \underline{3,600 \text{ ft}^2 (120' \text{ sq})}$$

$$\text{Total 2 building area} = 10,800 \text{ ft}^2 (103' \text{ sq})$$

**Must be on a specific $\frac{1}{4}$
Acre of the 40 acres**

Mayfield Township – Current

Agricultural labor housing and/or migrant housing

- a) Minimum parcel size is 20 acres.
- b) Migrant Farm Worker Residents of housing must be employed in the farm operation with evidence provided in the form of pay stubs, time sheets, etc. Upon request of the zoning administrator, the land owner must furnish the names, contact information, citizenship records, and duration of stay (arrival and departure) of inhabitants of all migrant housing.
- c) Setback one hundred (100) feet from parcel lines and public and private roads.
- d) Screened from existing residential structures.
- e) Setback two hundred (200) feet from the principal dwelling. Ordinance 4.29

MI ELLIOTT-LARSEN CIVIL RIGHTS ACT

Sec. 102. (1) The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

MICHIGAN ZONING ENABLING ACT

- Sec. 207. A zoning ordinance or zoning decision **shall not have the effect of totally prohibiting the establishment of a land use** within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.

Challenges

- Comingling of issues
- Aversion to local/state/federal inter-agency questioning
- Lack of financial backing for employer- or employee-based legal action
- Inconsistent messaging to municipalities
- **CONSIDER RUNNING FOR LOCAL ZONING BODIES**

On The Horizon

Current Housing Stock

- Due to regulatory burdens, e.g. you can fix but not replace existing or establish new housing, and economics about half of our housing stock is at or beyond expected life span
- Let's look forward to potential construction options

Identified Interests

- Economical
- Unified codes with local exceptions
- Eliminate non-essential or duplicative regulations
- Funding source(s)?
- Cooling and heating
- Personal storage
- Modern kitchen
- Broadband
- Accountability for housing conditions

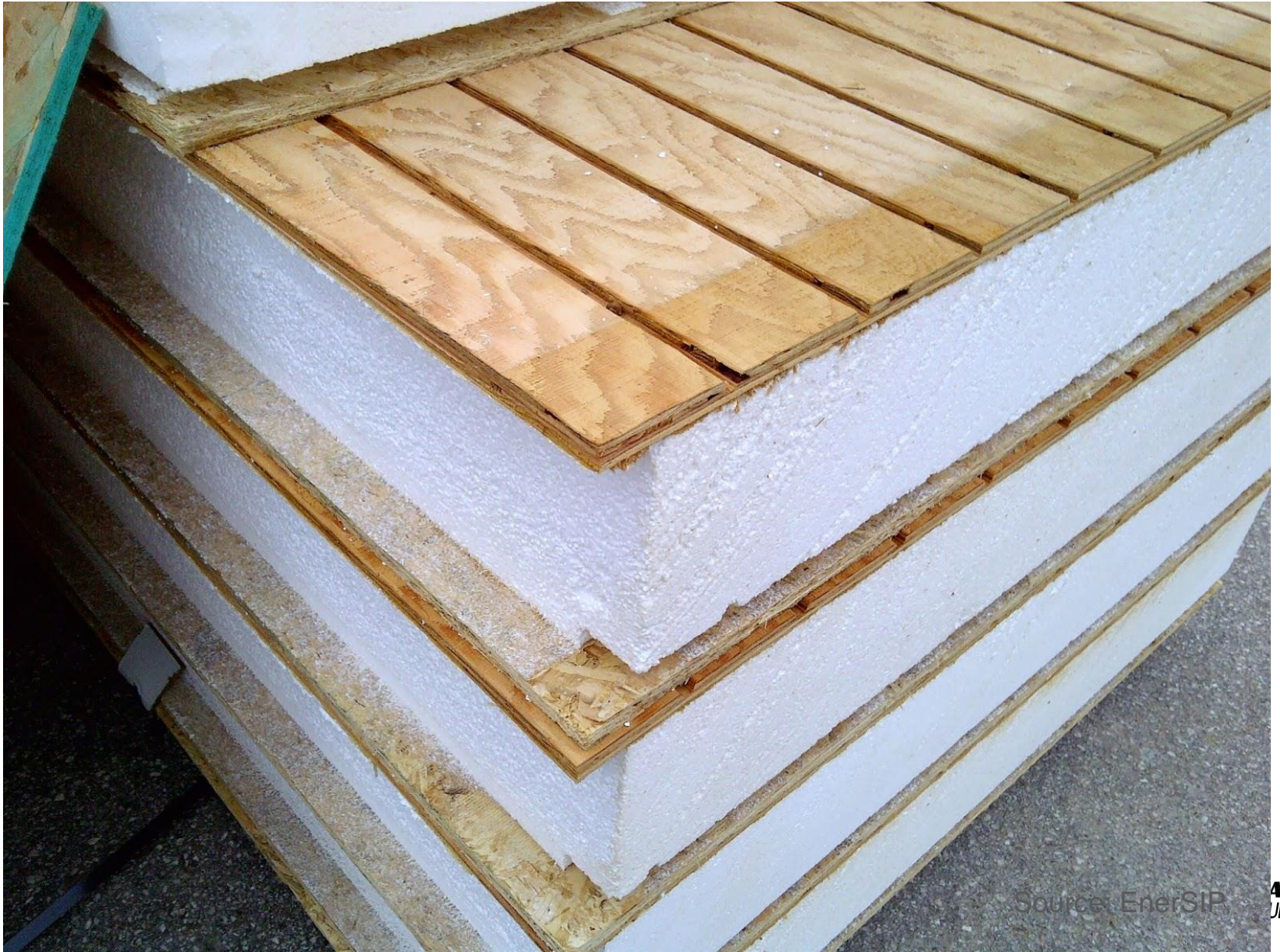
Desire to regulate all ag worker-related housing

Structural Insulated Panels



Source: Korwall Industries

Multiple Interior/Exterior Potential



Source: EnerSIP

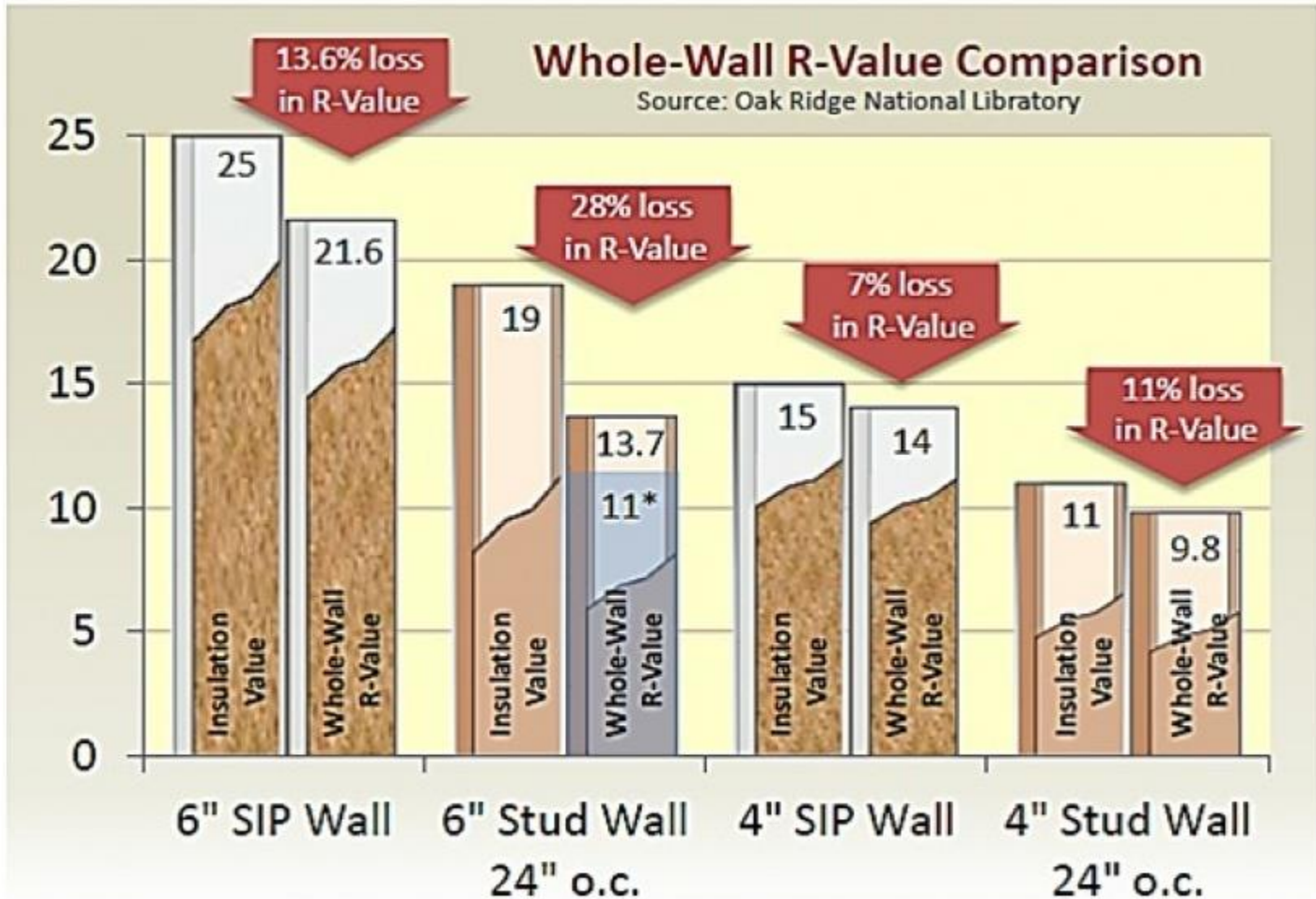
AN
UREAU®

Utility Chases Incorporated



Source: EnerSIP

Very Tight /Energy Efficient



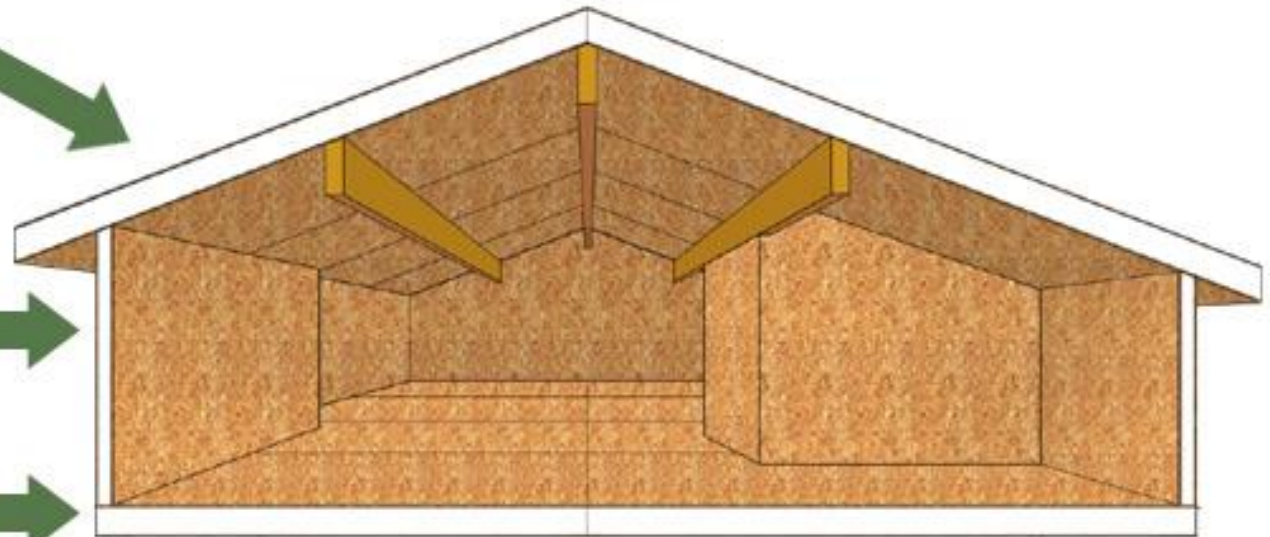
Open Concept with Fixed or Movable Walls

SIPs - An Energy Efficient Alternative

SIP Roof Panels
R-42 to R-48

SIP Wall Panels
R-15 to R-33

SIP Floor Panels
R-33 to R-42



Source: EnerSIP



Source: Elemental Green



Source: Stauffer & Sons Construction

SIP Industry Partners with Education

- Note - Military training is not covered by OSHA



- With foundation in place this can be up in less than a day

SIP or High Insulation vs Costs

- Construction time – 40%-65% labor reduction
- Energy – 40%-60% energy use reduction
- Credits – Energy credits may be available?
- Durability – Surfaces may be more durable but insulation subject to rodents if exposed

Combination Construction

SIP/Modular



Source: KES Group

SIP/Modular



Source: KES Group

Panelized Erectable



Source: Innovative Panel Technologies, Inc.

Converted Container





Source: Falcon Structures

Converted Container

40 feet



8 feet

Source: Falcon Structures



Mobile Facilities



www.activedeployment.com

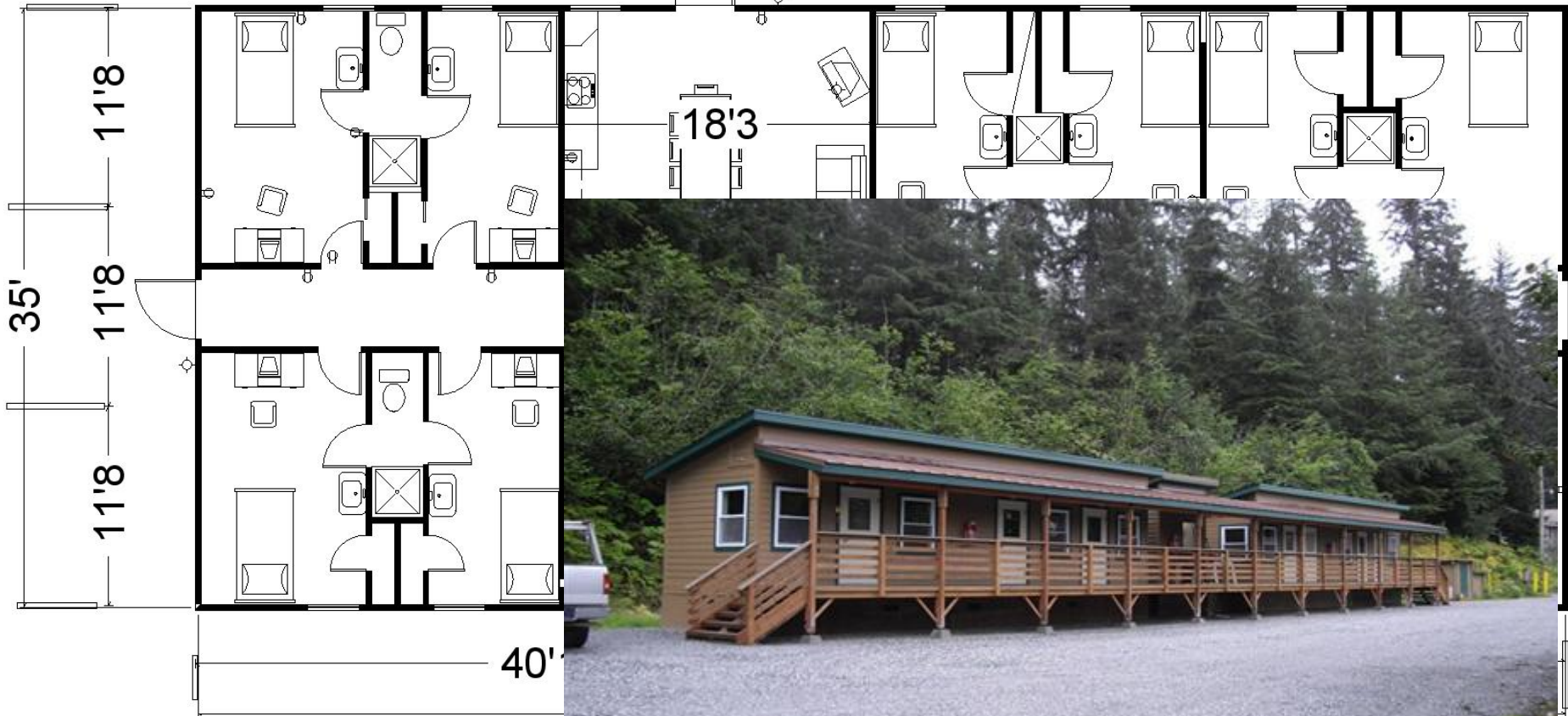
ADS
Active Deployment Systems
Bunkhouse Sleeper Trailer

866-975-4201

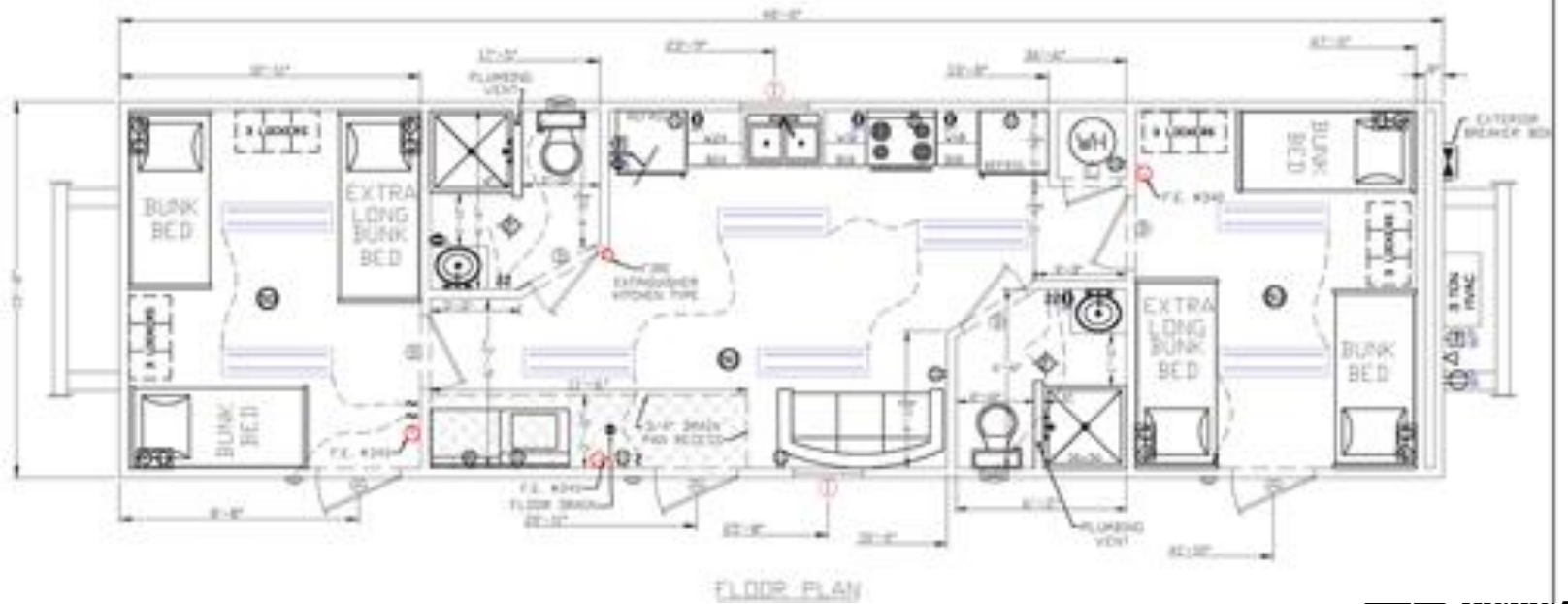
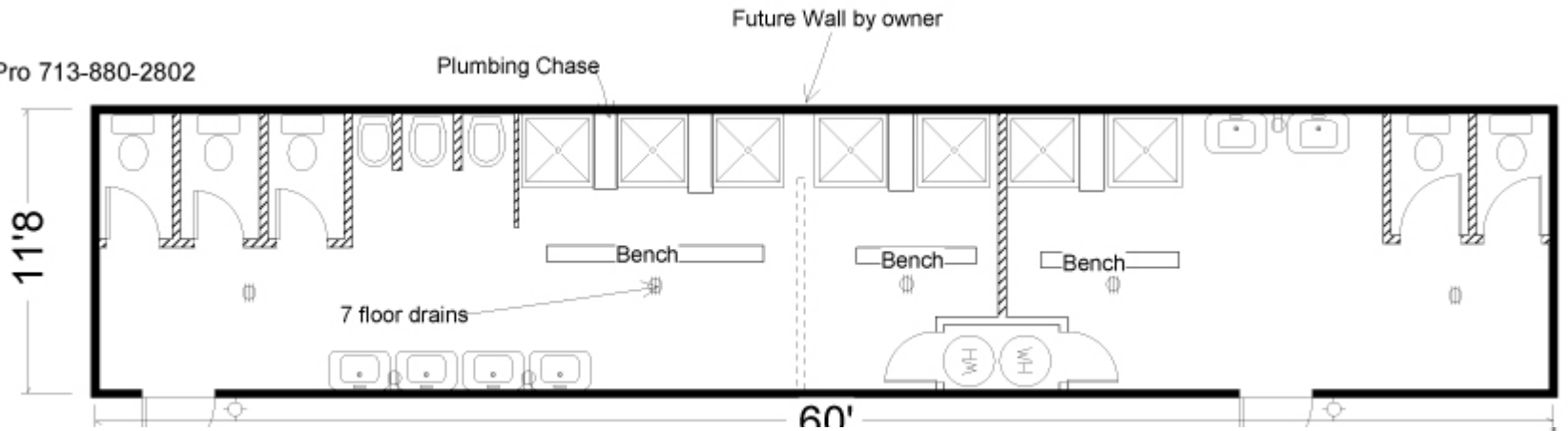




28 Man Bunk House



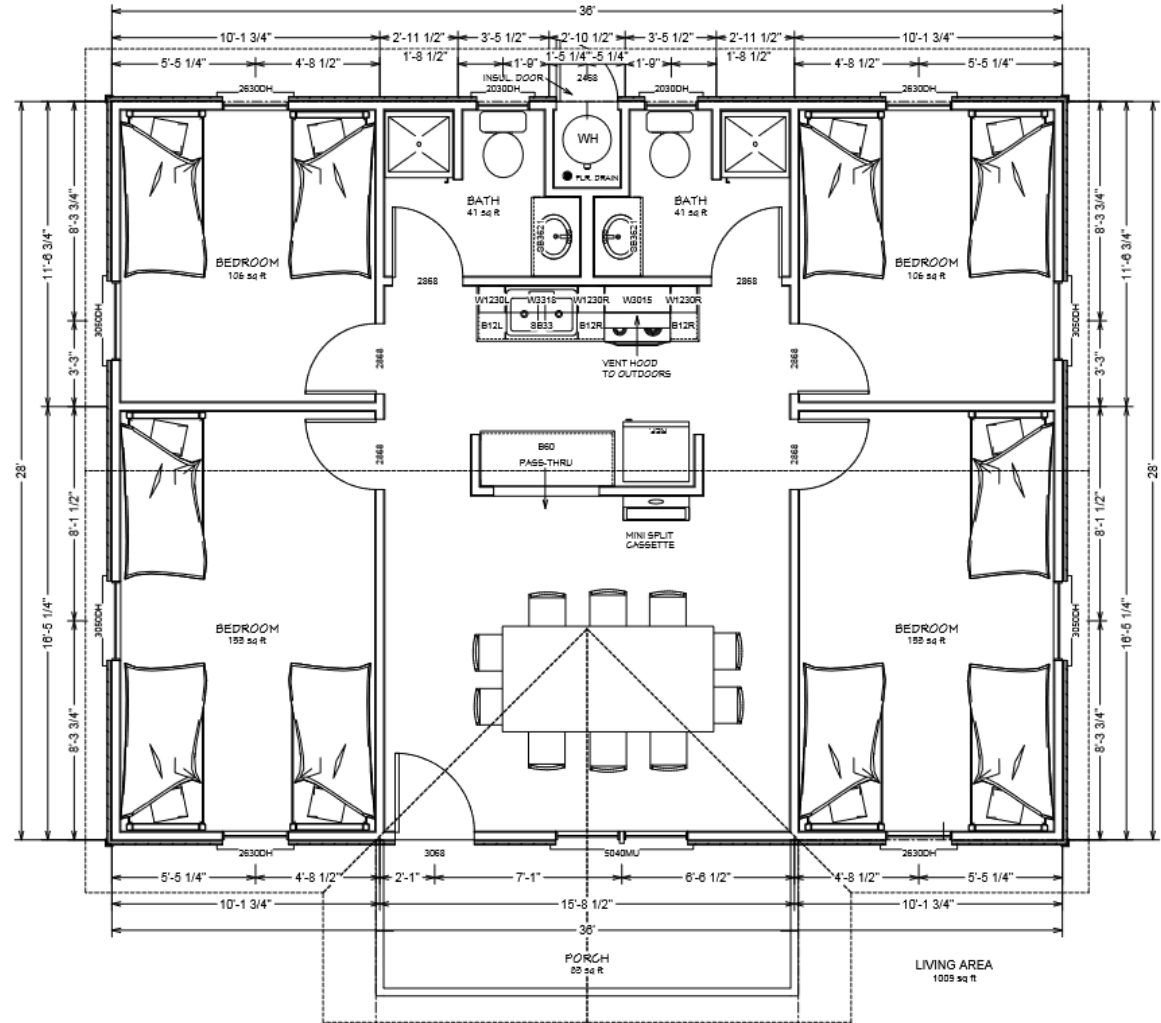
Building Pro 713-880-2802



Source: BuildingPro.com

MDARD Plans

- MDARD is beginning work on revising sample plans with the possibility of incorporating new technologies



Source: MDARD

Heat Stress

OSHA Proposed Heat Standard

- The Occupational Safety and Health Administration (OSHA) has issued an Advance Notice of Proposed Rulemaking (ANPRM) for Heat Injury and Illness Prevention in Outdoor and **Indoor Work Settings** at 80 degrees
 - Comments on the Proposal to create a Standard are due December 27, 2021
 - See: <http://www.federalregister.gov/d/2021-23250>

Heat Index	Risk Level	Protective Measures
Less than 91°F	Lower (Caution)	Basic heat safety and planning
91°F to 103°F	Moderate	Implement precautions and heighten awareness
103°F to 115°F	High	Additional precautions to protect workers
Greater than 115°F	Very High to Extreme	Triggers even more aggressive protective measures

Employer Assisted Housing?

- OSHA rules generally applies to workplaces, however, federal and the MIOSHA regulates Temporary Labor Housing
- Will the proposed heat standard incorporate employment associated living quarters when calculating heat stress?

Heating & Cooling – A Requirement or an Employee Benefit?

- Current Standard requires equipment capable of maintaining 65 or 70 degrees for “winter occupancy”
- Should cooling be looked at?
 - Fans, extra window size, insulation?
 - Providing or allowing room air conditioners?
 - Modifying heating unit types?

Questions