



Interoffice Memorandum

November 29, 2023

AGENDA ITEM

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

THRU: Venerria L. Thomas, Director *Venerria L. Thomas*
Community and Family Services Department

FROM: **Matt Suedmeyer, Manager**
Parks and Recreation Division

SUBJECT: **Consent Agenda Item – December 12, 2023**
Shingle Creek Trail – Amendment to the Florida Turnpike
Enterprise (FTE) Trail Construction, Operation and
Maintenance Agreement

The Public Works Department has completed the design for Shingle Creek Trail Phase I, Segments 2 (430225-5-58-01) and 3 (430225-4-58-01). The Florida Turnpike Enterprise owns the State Road 528 bridge under which the proposed trail will traverse, hence this Agreement obligates the County to construct, operate and maintain the trail within the limited access rights of way. The Florida Department of Transportation District Five is also requiring the County to execute this Agreement in order to clear the right-of-way for the trail and obligate federal funding for construction.

The Amendment seeks to update the original agreement to be extended until December 31, 2027, and make minor revisions to the original trail design within the S.R. 528 Right-of-Way.

The County Attorney's Office, Risk Management Division, Parks and Recreation Division, and Public Works Engineering Division have reviewed this Agreement and find it acceptable.

ACTION REQUESTED: **Approval and execution of Amendment to Trail Construction, Operation and Maintenance Agreement by and between State of Florida, Department of Transportation and Orange County regarding Shingle Creek Trail. Districts 1 and 6.**

MS:rr/vt;ms

c: Carla Bell Johnson, AICP, Deputy County Administrator

BCC Mtg. Date: December 12, 2023

**AMENDMENT TO TRAIL CONSTRUCTION, OPERATION
AND MAINTENANCE AGREEMENT
BY AND BETWEEN
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
AND
ORANGE COUNTY
REGARDING SHINGLE CREEK TRAIL**

THIS AMENDMENT (the "Amendment") TO TRAIL CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT BY AND BETWEEN STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION AND ORANGE COUNTY REGARDING SHINGLE CREEK TRAIL ("Agreement") is entered by and between the FLORIDA DEPARTMENT OF TRANSPORTATION, an executive agency of the State of Florida (hereinafter the "DEPARTMENT"), and ORANGE COUNTY, a charter county and political subdivision of the State of Florida (hereinafter referred to as "COUNTY")(collectively referred to as "Parties").

WHEREAS, effective December 23, 2020, DEPARTMENT and COUNTY entered into the Agreement to address the relationship between DEPARTMENT and COUNTY with respect to the general responsibilities of the Parties associated with COUNTY's design, construction, operation, and maintenance of a portion of its existing Shingle Creek Trail within DEPARTMENT's limited access right of way; and

WHEREAS, DEPARTMENT and COUNTY seek to amend certain matters related to the Agreement in the manner set forth hereinbelow.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and covenants hereinafter set forth, and other good and sufficient consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

1. Each of the above recitals is true and correct to the best of the knowledge, information, and belief of the Parties, and they form a material part of this Amendment, upon which the Parties have relied.
2. Section 5 of the Agreement is amended as follows:

Immediately after the second sentence, add the following sentence:

"COUNTY will adjust and accommodate all impacted drainage facilities within DEPARTMENT's LA ROW in accordance with DEPARTMENT's regulations and the existing South Florida Water Management District permit."

3. Section 7 of the Agreement is amended as follows:

Immediately after the third sentence, add the following sentences:

"COUNTY will modify and pay for design and construction of the fence as needed along both sides of DEPARTMENT's LA ROW with DEPARTMENT responsible for its post-construction maintenance. COUNTY will construct and maintain two (2) gates at DEPARTMENT's LA ROW fence line. To provide for designated trail maintenance access for DEPARTMENT and COUNTY maintenance access, COUNTY will construct and be responsible for the post-

construction maintenance of two (2) additional gates (with a gate on each side of the proposed boardwalk) within DEPARTMENT's LA ROW. COUNTY is required to construct a fence along the wingwall on the proposed boardwalk south of the SR 528 bridge, with DEPARTMENT responsible for its post-construction maintenance."

4. Section 21 of the Agreement is amended as follows:

Replace the first sentence with the following sentence:

"COUNTY work and construction shall be completed by December 31, 2027, unless completed sooner. "

5. Section 26 of the Agreement is amended as follows:

Add new subsection (k) with the following sentence:

"COUNTY will restore the existing drainage system to its original permitted condition for the area between the Shingle Creek Trail proposed boardwalk and the northern fence line at the DEPARTMENT's LA ROW, with COUNTY responsible for its post-construction maintenance."

6. Exhibit B of the Agreement is replaced with the attached new Exhibit B.

7. Exhibit C of the Agreement is added with the attached new Exhibit C.

8. All other provisions of the Agreement not specifically addressed above, will remain in full force and effect unless otherwise formally amended by the Parties. To the extent that this Amendment conflicts with the Agreement, this Amendment will govern.

IN WITNESS WHEREOF, the COUNTY and the DEPARTMENT have caused this Amendment to be executed and delivered by their respective duly authorized officers on the dates indicated below.

BOARD OF COUNTY COMMISSIONERS
OF ORANGE COUNTY, FLORIDA

BY: *Jerry L. Demings*
for Jerry L. Demings, Mayor

DATE: December 12, 2023



ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

BY: *Jennifer Ann-Kline*

Deputy Clerk
Printed Name: Jennifer Lara-Klimetz

FLORIDA DEPARTMENT OF TRANSPORTATION

BY: Nicola A. Liquori
Nicola Liquori
Executive Director & Chief Executive Officer
Florida's Turnpike Enterprise

Date Signed: JANUARY 16, 2024

Attest: Denise Conner
Executive Secretary

Approved as to form and legality:

[Signature]
James T. Hetz, Assistant General Counsel

BCC Mtg. Date: December 1, 2020

**TRAIL CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT
BY AND BETWEEN ORANGE COUNTY
AND
THE FLORIDA DEPARTMENT OF TRANSPORTATION**

THIS TRAIL CONSTRUCTION, OPERATION, AND MAINTENANCE AGREEMENT ("Agreement"), is made and entered into by and between the State of Florida, Department of Transportation, an executive agency of the State of Florida having a business address located at Florida's Turnpike Headquarters, Turkey Lake Service Plaza, Milepost 263, Florida's Turnpike, Building 5315, P.O. Box 613069, Ocoee, Florida 34761 (hereinafter referred to as "DEPARTMENT") and Orange County, a charter county and political subdivision of the State of Florida, with a business address of P.O. Box 1393, Orlando, FL 32802-1393 (hereinafter referred to as "COUNTY").

WITNESSETH:

WHEREAS, COUNTY is constructing the Orange County Shingle Creek Regional Trail (the "TRAIL," a project between DEPARTMENT District 5 and COUNTY; FPID Number 430225-4-58-01 with COUNTY Contract No. Y12-819-CH), a portion of which (the "TRAIL PORTION") enters DEPARTMENT's Florida's Turnpike Enterprise (FTE)'s limited access right of way ("LA ROW") where the Beachline Expressway (SR 528) bridges over Shingle Creek as shown on the extracted Construction Plans (collectively, the "IMPROVEMENTS") included in the Shingle Creek Regional Trail Phase 1 Segment 3 Design Variation for Trail Inundation, attached hereto and incorporated herein as Exhibit "A";

WHEREAS, the parties recognize that DEPARTMENT's LA ROW was acquired by DEPARTMENT to serve state transportation purposes and that operation of the TRAIL is subject to applicable laws, rules, and regulations. It is agreed by COUNTY and DEPARTMENT that construction and use of the IMPROVEMENTS is subordinate to any present or future need of DEPARTMENT for construction of any improvement, maintenance, or use of SR 528, or for any other transportation purpose;

WHEREAS, pursuant to the terms and conditions of this Agreement, DEPARTMENT will permit COUNTY to access and occupy its LA ROW and for COUNTY, at no expense to DEPARTMENT, to construct, operate, and maintain the IMPROVEMENTS shown on Exhibit

“A”; and

WHEREAS, DEPARTMENT and COUNTY agree that all assigned operation and maintenance obligations, including maintenance occurring during the term of construction and after completion of construction (sometimes referred to as “post-construction maintenance”) set forth in this Agreement, further described in Exhibit “A”, and delineated in the Maintenance Graphic attached hereto and incorporated herein as Exhibit “B”, shall survive the expiration or earlier termination of the construction phase of this Agreement and shall be in accordance with the laws of the State of Florida;

NOW, THEREFORE, based on the premises above, and in consideration of the mutual covenants contained herein, the parties hereby agree that the construction of the IMPROVEMENTS shall proceed in accordance with the following terms and conditions:

1. The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement.

CONSTRUCTION OF IMPROVEMENTS

2. COUNTY is authorized, subject to the conditions set forth in this Agreement, to access the DEPARTMENT’s LA ROW as reasonably necessary to perform all activities necessary for the construction of the IMPROVEMENTS, as described in the plans, scope of services, technical provisions, and special provisions all as set forth in Exhibit “A”. Additionally, COUNTY is authorized, subject to the conditions set forth in this Agreement, to access the DEPARTMENT’S LA ROW to perform only those activities necessary for the operation and post-construction maintenance of the TRAIL. COUNTY shall not impact traffic on SR 528 in any way during construction of the TRAIL PORTION.

3. COUNTY’s rights under this Agreement to construct, operate, and maintain the IMPROVEMENTS within DEPARTMENT’s LA ROW are for permissive use only. COUNTY’s permissive use shall not interfere with and be subordinate to DEPARTMENT’s property rights, including the rights to improve, operate, and maintain its LA ROW. Neither the granting of the permission to use DEPARTMENT LA ROW nor the placing of IMPROVEMENTS upon DEPARTMENT property shall operate to create or vest any property right to or in COUNTY.

4. The parties acknowledge that an Orange County Public Utilities 36” Wastewater

Force Main ("OCPU FM") was permitted by DEPARTMENT on 2/28/89 to be in the LA ROW (as shown on Exhibit "B").

5. COUNTY shall be responsible for designing, financing, procuring all components of, constructing, installing, operating, and maintaining the TRAIL PORTION, which enters from the SR 528 LA ROW south and continues north perpendicular to the SR 528 roadway to tie into the existing 18 foot wide concrete trail located under the existing Shingle Creek Bridge. The TRAIL PORTION will continue on the north side of the existing 18 foot wide concrete trail under the Shingle Creek Bridge and extend longitudinally in the SR 528 LA ROW to the east for about 300 feet where it exits the LA ROW, as more completely set forth in Exhibit "A". COUNTY shall be similarly responsible for all proposed and future improvements associated with the safe operation of the TRAIL PORTION including, but not limited to, lighting, and any future trail requirements required by DEPARTMENT

6. Before commencing construction of the TRAIL, COUNTY shall provide the DEPARTMENT with copies of construction plans for the TRAIL PORTION. COUNTY's construction plans must explicitly reflect that the TRAIL PORTION is connected to and part of the entirety of the TRAIL (all phases and segments), with no trail gaps, as well as documentation that reflects that COUNTY has funding in place to complete the TRAIL with no trail gaps. DEPARTMENT shall review the plans for the purpose of determining compliance with the provisions of this Agreement. If DEPARTMENT determines that any portion of the TRAIL depicted in the plans conflicts with the obligations under this Agreement, the DEPARTMENT will notify COUNTY of its determination so that COUNTY may remove such conflict(s) from its plans. If County is unwilling to remove such conflicts, the parties agree to meet in good faith to resolve the conflict(s).

7. As set forth in Exhibit "A", COUNTY agrees to install and maintain, at no cost to DEPARTMENT, a black vinyl chain link fence to restrict access between the TRAIL PORTION and the DEPARTMENT's LA ROW. In addition, County will install fence gates in the TRAIL PORTION at the interfaces between the proposed boardwalks and the existing concrete pavement under SR 528. COUNTY shall also install 42" pedestrian/bicycle railing along the entire limits of the existing concrete trail between the access gates. COUNTY shall be required to submit all construction plans and design documents to the DEPARTMENT for review and approval by the DEPARTMENT Turnpike Design Engineer prior to any work being commenced. Should any changes to the plans be required prior to or during construction of the

IMPROVEMENTS, COUNTY shall be required to notify DEPARTMENT of the changes and receive approval within 60 days from the DEPARTMENT Turnpike Design Engineer prior to the changes being constructed.

8. During the construction, operation, and post-construction maintenance phase of this Agreement, COUNTY shall not use the TRAIL PORTION for storage, delivery of materials, or any other non-trail related purpose.

9. During the construction, operation, and post-construction maintenance phase of this Agreement, except in the case of an emergency, COUNTY shall not enter upon any property of DEPARTMENT, above or under the location designated for the TRAIL PORTION within the SR 528 LA ROW, without the prior approval of DEPARTMENT.

10. During the construction, operation, and post-construction maintenance phase of this Agreement, DEPARTMENT and COUNTY acknowledge that DEPARTMENT shall be granted access to the location designated for the TRAIL PORTION within the LA ROW and over, across, or under the TRAIL PORTION in order to perform maintenance on other DEPARTMENT facilities that may be located on, over, under or adjacent to the TRAIL PORTION and upon conclusion of its activity DEPARTMENT shall restore any impacted COUNTY IMPROVEMENTS to their previous condition.

11. The parties acknowledge that DEPARTMENT has issued permits or other authorization for the installation and maintenance of utilities within the location designated for the TRAIL PORTION within the LA ROW and, under current law, is required to continue to issue permits for the installation and maintenance of utilities within this location in accordance with DEPARTMENT's rules. DEPARTMENT, and the owners of any existing utilities, may install, permit, design, manage, maintain, inspect, repair, and rehabilitate any of their existing utilities (whether provided by DEPARTMENT, the State, or third parties) in, on, under, across, over, or through the TRAIL PORTION (including, but not limited to, water and sewer lines, power transmission lines, fiber optic cable, surveillance equipment, and other communications), upon reasonable notice to and coordination with COUNTY, in compliance with applicable federal and state laws, rules, statutes, and regulations, and in compliance with DEPARTMENT's rules.

12. COUNTY will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

13. COUNTY shall maintain the area of the IMPROVEMENTS at all times during the

construction, operation, and post-construction maintenance periods. During construction of the IMPROVEMENTS, the parties shall coordinate any and all work needs of the DEPARTMENT that occur within the DEPARTMENT's affected LA ROW as shown in Exhibit "A".

14. COUNTY shall notify DEPARTMENT a minimum of thirty (30) days before beginning construction within DEPARTMENT's LA ROW. COUNTY shall notify DEPARTMENT should construction be suspended for more than five (5) consecutive working days.

15. COUNTY shall ensure that its contractors and subcontractors working in connection with the IMPROVEMENTS will possess insurance coverage as stated in the applicable current edition of DEPARTMENT's Standard Specifications for Road and Bridge Construction, Section 7-13 titled "Insurance". All required insurance certificates shall name both DEPARTMENT and COUNTY as additional insureds and shall insure both DEPARTMENT and COUNTY against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of COUNTY's contractors and/or subcontractors accessing the DEPARTMENT's LA ROW and such parties' performance within the DEPARTMENT's LA ROW. Any required bond and insurance policies shall remain in effect until COUNTY's completion of construction and acceptance by the DEPARTMENT. Prior to commencement of the construction and on such other occasions as the DEPARTMENT may reasonably require, COUNTY shall provide, or cause to be provided, to the DEPARTMENT certificates documenting the requisite bond and insurance coverage with its contractors and subcontractors. All required bonds and insurance policies shall name DEPARTMENT and COUNTY as co-obligees and additional insureds, respectively.

16. COUNTY shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations are documented on the construction plans. All utility conflicts shall be resolved directly with the applicable utility. COUNTY shall require each of its contractors to comply with the Sunshine 811 procedures prior to any excavation work within the IMPROVEMENTS Area. COUNTY shall take responsibility to designate and locate, including physical exposure as necessary, all DEPARTMENT owned subsurface utility facilities as shown on the plans that are affected by the scope of work described in Exhibit A and COUNTY shall be responsible to ensure that existing utilities are correctly shown to avoid conflicts. DEPARTMENT owned utility facility locations shown in Exhibit "A" are approximate. DEPARTMENT owned utility facilities are not located through

Sunshine 811. Notwithstanding DEPARTMENT approval of COUNTY plans, COUNTY shall be responsible for any damages caused by COUNTY, its agents, contractors, or employees to utilities.

17. It is hereby agreed by the parties that this Agreement creates a permissive use only and all IMPROVEMENTS resulting from this Agreement shall become the property of COUNTY. Neither the granting of the permission to use DEPARTMENT's LA ROW nor the placing of facilities or IMPROVEMENTS upon the DEPARTMENT property shall operate to create or vest any property right to or in COUNTY. COUNTY shall not acquire any right, title, interest, or estate in DEPARTMENT's LA ROW, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, COUNTY's access to, use, occupancy, maintenance, or possession of DEPARTMENT's LA ROW. The provisions of the paragraph shall survive the termination of this Agreement.

18. COUNTY shall perform, or cause to be performed, any required testing associated with the design and construction of the IMPROVEMENTS. Testing results shall be made available to DEPARTMENT upon reasonable request. DEPARTMENT shall have the reasonable right to perform its own independent testing at its sole expense during the construction of the IMPROVEMENTS.

19. COUNTY shall exercise the rights granted herein and shall otherwise perform this Agreement with reasonable care, in accordance with the terms and provisions of this Agreement, and all applicable federal, state, local, administrative, regulatory, safety, and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the DEPARTMENT, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, the Army Corps of Engineers, the United States Coast Guard, and local governmental entities.

20. If, during the construction of the IMPROVEMENTS, DEPARTMENT reasonably determines a condition exists that threatens the public's safety, DEPARTMENT may, at its reasonable discretion, cause construction operations to cease and immediately have any potential hazards removed from its LA ROW at COUNTY's sole cost, expense, and effort.

21. COUNTY work and construction shall be completed by August 12, 2022, unless completed sooner. If construction is not completed within this time, DEPARTMENT may issue notice to County and determine a date certain for completion. If this additional timeframe

is not met, DEPARTMENT may terminate this Agreement at any time after thirty (30) days notice to COUNTY without liability to COUNTY. DEPARTMENT may terminate this Agreement at any time without liability to COUNTY in the event COUNTY does not cure a material default of a provision of this Agreement within sixty (60) days after receiving DEPARTMENT's written notice of such default. If the default cannot reasonably be cured within sixty (60) days, then COUNTY, after approval from DEPARTMENT, may have such additional time as determined by the DEPARTMENT to complete the cure, provided the cure is commenced immediately and diligently pursued without interruption until the cure has been completed.

22. COUNTY shall be responsible for restoring all features that require relocation within the DEPARTMENT LA ROW to accommodate the IMPROVEMENTS, and that are not included in the plans as part of the IMPROVEMENTS, at COUNTY's sole cost and expense.

23. COUNTY will be responsible for clean up or restoration required to correct any environmental or health hazards that may result from the construction of the IMPROVEMENTS.

24. Upon its completion of construction, COUNTY will be required to submit to the DEPARTMENT final as-built plans and construction specifications and an engineering certification that construction was completed in accordance with such plans and construction specifications. Prior to the termination of construction under this Agreement, COUNTY shall remove its presence, including, but not limited to, all of the COUNTY's property, machinery, and equipment from the DEPARTMENT's LA ROW and shall restore those portions of the DEPARTMENT's LA ROW disturbed or otherwise altered by the IMPROVEMENTS to substantially the same condition that existed immediately prior to the commencement of construction of the IMPROVEMENTS.

25. If DEPARTMENT determines that the IMPROVEMENTS are not completed in accordance with the provisions of this Agreement, DEPARTMENT shall deliver written notification of such to COUNTY. COUNTY shall have thirty (30) days from the date of receipt of the DEPARTMENT'S written notice, or such other time as the COUNTY and the DEPARTMENT mutually agree to in writing, to complete the IMPROVEMENTS and provide the DEPARTMENT with written notice of the same (the "Notice of Completion"). If COUNTY fails to timely deliver the Notice of Completion, or if it is determined that the IMPROVEMENTS are not completed in accordance with the contract documents after receipt of the Notice of Completion, DEPARTMENT, within its reasonable discretion may: 1) provide

the COUNTY with written authorization granting such additional time as the DEPARTMENT deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) in accordance with the contract documents, at the COUNTY's sole cost and expense, without DEPARTMENT liability to the COUNTY for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the DEPARTMENT elects to correct the deficiency(ies), the DEPARTMENT shall provide the COUNTY with an invoice for the reasonable actual costs incurred by the DEPARTMENT and the COUNTY shall pay the invoice within sixty (60) days of the date of the invoice.

TRAIL PORTION OPERATION AND MAINTENANCE

26. After the IMPROVEMENTS are installed and accepted by DEPARTMENT, the IMPROVEMENTS shall then become the sole property, operation, and maintenance responsibility of COUNTY. COUNTY's obligations to provide operation and maintenance services shall survive the expiration or earlier termination of the construction of IMPROVEMENTS portion of this Agreement. During this post-construction maintenance and operation period, COUNTY further agrees that it shall comply with the operational and maintenance obligations and conditions set forth in Exhibit "A" and Exhibit "B", including, but not limited to the following:

- (a) COUNTY shall perform daily monitoring of the rainfall estimates through the use of real-time readings of water levels at Shingle Creek. In the event the relevant reading is not available, the nearest available site will be evaluated. Should a forecasted rain event be anticipated to cause the water level to rise to a height at or above the TRAIL PORTION, COUNTY shall, prior to such event, close the gates installed as a part of this Agreement. Included with these gates are signage indicating the TRAIL PORTION closure. COUNTY shall also install signage to warn users of the TRAIL PORTION that they are approaching flood prone areas. Furthermore, COUNTY shall, prior to re-opening the affected section of the TRAIL PORTION, inspect such section of the TRAIL underpass after a flood event.
- (b) Maintenance and repairs to address any TRAIL safety concerns will be performed

in a timely manner by COUNTY at no cost or expense to DEPARTMENT. Gates will remain closed until such repairs are completed. If COUNTY does not correct unsafe conditions on the TRAIL PORTION in a timely manner after discovery or notification, DEPARTMENT reserves the right to close access to the TRAIL PORTION until the unsafe conditions are eliminated.

- (c) COUNTY will notify the DEPARTMENT within 24 hours and close the TRAIL PORTION upon discovery or notification of any unsafe conditions occurring or developing outside of the TRAIL PORTION causing unsafe conditions to develop within the TRAIL PORTION, or affecting its users, whether originating from within the DEPARTMENT's LA ROW or the surrounding area. DEPARTMENT, in consultation with COUNTY, shall determine the length of any such closure period.
- (d) COUNTY shall not designate or have designated any portion of the TRAIL PORTION a national, scenic, or recreational trail, or any other similar designation that will limit DEPARTMENT's ability to accommodate future state transportation and Turnpike needs.
- (e) During the operation and post-construction maintenance phase, should COUNTY request changes to the final as-built plans, COUNTY shall be required to notify DEPARTMENT of the changes and receive approval and permission from DEPARTMENT and enter into a new construction agreement prior to the changes being constructed.
- (f) COUNTY acknowledges that it will maintain the TRAIL PORTION, as depicted in Exhibit "A," according to applicable DEPARTMENT standards, which include, but are not limited to, the Americans with Disabilities Act, Maintenance Rating Program Manual, Design Standards, and the Standard Specifications, as may be amended from time to time.
- (g) Maintenance items shall include, but are not necessarily limited to: vegetation management, ornamental landscaping, repair of slopes/erosion, removal of graffiti, boardwalks, signing, pavement markings, and all other features depicted in Exhibit "A." Pavement surfaces must be free from residue accumulation, algae, vegetation, and other slip or trip hazards. COUNTY shall trim landscaping, mow, sweep, edge, and provide weed control from the fence to the LA ROW line as

depicted in Exhibit "A". Trash and debris shall be removed within the TRAIL a minimum of twice each month; trash and debris removal shall be conducted prior to the mowing cycle. Any requests for maintenance shall be handled and performed by COUNTY. COUNTY shall ensure the safety of the public by repairing and maintaining all IMPROVEMENTS in accordance with DEPARTMENT standards. The COUNTY shall maintain paint on railings, sign poles, structures, etc. within the TRAIL PORTION. Repairs to any TRAIL structural or safety feature shall be in kind and to DEPARTMENT standards. COUNTY shall maintain all landscaping to DEPARTMENT standards. COUNTY shall maintain and repair the TRAIL PORTION at no cost and expense to DEPARTMENT, in a good and workmanlike manner, and with reasonable care.

- (h) COUNTY shall conduct an annual inspection of the TRAIL PORTION to ensure that any and all safety deficiencies are addressed.
- (i) When the TRAIL PORTION is at the end of its useful life, the COUNTY is responsible for prioritizing the replacement or reconstruction of the TRAIL PORTION as a new project, subject to DEPARTMENT review and any requirements for approval.
- (j) If at any time COUNTY has not performed the maintenance responsibility on the TRAIL PORTION in accordance with this Agreement, DEPARTMENT shall have the option of (a) notifying the COUNTY of the deficiency with a requirement that it be corrected within a specified time; or (b) DEPARTMENT may perform the necessary maintenance at COUNTY's sole cost and expense, and send an invoice to COUNTY, equal to the actual, reasonable cost incurred by DEPARTMENT for such maintenance. Any action taken by DEPARTMENT does not relieve any obligation of COUNTY under the terms and conditions of this Agreement. Failure to perform maintenance of the TRAIL PORTION in accordance with this Agreement may impact DEPARTMENT funding participation in future COUNTY projects.

27. As it relates to COUNTY's access to the TRAIL PORTION or the construction, maintenance, and operation of IMPROVEMENTS, including their continued presence within the LA ROW, this Agreement will terminate upon the occurrence of any of the following events,

following ten (10) days written notice by DEPARTMENT:

- (a) If the OCPU FM shown in Exhibit "B" must be replaced, COUNTY shall realign and/or relocate the section of the TRAIL PORTION that extends longitudinally for about 300 feet on the north side of the SR 528 roadway. This section of the TRAIL PORTION will be removed from the SR 528 LA ROW and realigned to continue north and parallel to the east side of Shingle Creek where the TRAIL PORTION will exit the north side of the SR 528 LA ROW. This realignment will no longer require the TRAIL PORTION to extend longitudinally within the SR 528 LA ROW and COUNTY shall restore the area to its original condition prior to construction of the TRAIL PORTION.
- (b) If the needs of the DEPARTMENT for construction of any state road, for any improvement of the SR 528 that conflicts with or requires the use of TRAIL PORTION, or for any other transportation purpose.
- (c) If any other conflict, as reasonably determined by DEPARTMENT, known or unknown arises with respect to the TRAIL PORTION location during the term of this Agreement.
- (d) If COUNTY fails to keep IMPROVEMENTS in good and safe condition and repair as reasonably determined by DEPARTMENT.
- (e) If COUNTY fails to perform its duties under this Agreement, including failure to cure after notice.
- (f) If COUNTY fails to secure funding for construction of the TRAIL by _____, unless DEPARTMENT and COUNTY mutually agree to review and amend this Agreement to address current or future changes in the law, policies, procedures, rules, regulations or other related requirements.

28. In the event DEPARTMENT provides notice of termination of the Agreement, and the Agreement terminates, DEPARTMENT shall have no obligation to compensate COUNTY for the TRAIL PORTION or the IMPROVEMENTS, or any matters arising out of this Agreement, provided that a formal written notice is timely provided to the COUNTY by the DEPARTMENT before terminating the TRAIL Agreement. COUNTY's removal and restoration shall be completed within sixty (60) days of the date of DEPARTMENT's written notice requiring removal of the IMPROVEMENTS, or such other time as DEPARTMENT and COUNTY mutually agree in writing.

29. Removal and restoration shall be completed by COUNTY in accordance with all applicable laws, rules, and regulations.

30. Should COUNTY fail to complete the removal and restoration work as required herein, DEPARTMENT may:

- (a) provide COUNTY with written authorization granting such additional time to complete removal and restoration; or
- (b) complete the removal and restoration at COUNTY's sole cost and expense. Should DEPARTMENT elect to complete the removal and restoration, DEPARTMENT shall provide COUNTY with an invoice for the actual costs incurred by DEPARTMENT.

31. The parties recognize that DEPARTMENT's LA ROW was acquired primarily to serve state transportation purposes and that access to and operation of the TRAIL is subject to applicable laws, rules and regulations. Thus, it is agreed by the parties that access and use of the TRAIL PORTION for COUNTY recreation and operation is subordinate to the transportation needs of the DEPARTMENT, including, but not limited to, construction of any state road or for any improvement of SR 528. COUNTY agrees that neither the permission granted herein nor DEPARTMENT's knowledge of COUNTY's construction, operation, and maintenance of the IMPROVEMENTS within the LA ROW shall create any rights in COUNTY that are superior to DEPARTMENT's rights set forth in this Agreement.

32. COUNTY shall keep and maintain the IMPROVEMENTS in good and safe condition and repair at no expense to DEPARTMENT during the existence of this Agreement, and shall keep the same free and clear of any and all grass, weeds, brush, and debris of any kind, so as to prevent the same from becoming dangerous, inflammable, or objectionable, or a safety concern for the TRAIL PORTION or SR 528 users. DEPARTMENT shall have no duty to inspect or maintain any of the IMPROVEMENTS, including other structures thereon, during the term of this Agreement; however, DEPARTMENT shall have the reasonable right to enter the TRAIL PORTION property for purpose of inspection, including conducting an environmental assessment. Such assessment may include: surveying; sampling of building materials, soil, and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which may be reasonable and necessary. DEPARTMENT's right of entry shall not obligate inspection of the TRAIL PORTION property by DEPARTMENT, nor shall it relieve COUNTY of its duty to maintain the IMPROVEMENTS. DEPARTMENT shall, to the extent permissible

under the circumstances existing at the time, notify COUNTY within 24 hours of discovery by DEPARTMENT or notice to DEPARTMENT by a third-party of any safety concern. In the event of emergency due to a release or reasonably suspected release of hazardous waste on the property, DEPARTMENT shall have the right of immediate inspection, and the right, but not the obligation, to engage in remedial action, without prior notice, the sole cost and expense of which shall be the responsibility of the COUNTY.

INDEMNIFICATION

33. The COUNTY shall include language within its construction and maintenance agreements that ensures all of its contractors providing services hereunder promptly indemnify, defend, save, and hold harmless DEPARTMENT and DEPARTMENT's officers, agents, and employees from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees, and suits of any nature or kind whatsoever caused by, or arising out of, or related to services to be provided pursuant to this Agreement or any breach of this Agreement caused by its contractors including, without limitation, performance involving the IMPROVEMENTS within DEPARTMENT's LA ROW. Damages shall also include loss of DEPARTMENT toll revenue. The term "liabilities" shall specifically include, without limitation, any act, action, neglect, or omission by any COUNTY contractor and such contractors' respective officers, agents, employees, or representatives in any way pertaining to this Agreement, whether direct or indirect, except that neither COUNTY, or any of its contractors or the respective officers, agents, employees or representatives of each, will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence, intentional, or wrongful acts of DEPARTMENT or any of its officers, agents, or employees. COUNTY shall notify DEPARTMENT in writing immediately upon becoming aware of such liabilities. COUNTY's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. The indemnities given by any COUNTY contractor in connection with the IMPROVEMENTS shall survive termination of this Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect DEPARTMENT and such insurance coverage shall not be deemed a limitation of the indemnities to DEPARTMENT set forth in this Agreement. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement, in accordance with the laws of the State of Florida.

34. To the extent permitted by law, and without waiving any of its protections provided in Section 768.28, Florida Statutes, the COUNTY shall indemnify, defend, and hold harmless the DEPARTMENT and its officers, agents, and employees from any claim, loss, damage (including loss of toll revenue), cost, charge, or expense arising out of any act, error, omission, or negligent act or omission by COUNTY, its agents, or employees, and any third party claim directly related to and during the performance of the Agreement, except that neither the COUNTY, its officers, agents, or employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of the sole act, error, omission, or negligent act or omission by the DEPARTMENT or any of its officers, agents, or employees during the performance of the Agreement.

35. If DEPARTMENT receives a notice of claim for damages that are alleged to have been caused by COUNTY, DEPARTMENT will immediately forward the claim to COUNTY. COUNTY and DEPARTMENT will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, DEPARTMENT will determine whether to require the participation of COUNTY in the defense of the claim or to require that COUNTY defend DEPARTMENT in such claim as described in this section. DEPARTMENT's failure to promptly notify COUNTY of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by COUNTY. DEPARTMENT and COUNTY will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

MISCELLANEOUS TERMS

36. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the parties' respective sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

37. All formal notices, proposed changes and determinations between the parties hereto and those required by this Agreement, including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by certified United States mail, postage prepaid, to the parties at the contact information listed below.

To DEPARTMENT:

Chief Financial Officer
Florida's Turnpike Enterprise
Turnpike Headquarters - Bldg. 5315
P.O. Box 613069
Ocoee, FL 34761-3069

With Copy to:

Turnpike Chief Counsel
Turnpike Headquarters - Bldg. 5315
P.O. Box 613069
Ocoee, FL 34761-3069

To COUNTY:

Orange County, Florida
P.O. Box 1393
Orlando, Florida 32802-1393
Attention: Orange County Administrator

With Copy to:

Orange County Public Works
4200 South John Young Parkway
Orlando, FL 32839
Attention: Director

38. COUNTY shall not cause any liens or encumbrances to attach to any portion of DEPARTMENT's LA ROW.

39. This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance, or breach of this Agreement shall lie exclusively in the Circuit Court in and for Leon County, Florida.

40. Neither party may assign, pledge, or transfer any of the rights, duties, and obligations provided in this Agreement without the prior written consent of the other party. Nothing herein shall prevent COUNTY from delegating its duties hereunder, but such delegation shall not release the COUNTY from its obligation to perform this Agreement.

41. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for herein.

42. This instrument, together with the attached exhibits and documents made part hereof by reference, contain the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement,

and any part hereof, are waived, merged herein and superseded hereby.

43. By their signatures below, the parties hereby acknowledge the receipt, adequacy, and sufficiency of consideration provided in this Agreement.

44. The failure of either party to insist on one or more occasions on the strict performance or compliance with any term or provision of this Agreement shall not be deemed a waiver or relinquished in the future of the enforcement thereof, and it shall continue in full force and effect unless waived or relinquished in writing by the party seeking to enforce the same.

45. No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

46. If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

47. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

48. COUNTY / Vendor/ Contractor:

- a. shall utilize the U.S. Department of Homeland Security's E-verify system to verify the employment eligibility of all new employees hired by the COUNTY/ Vendor/Contractor during the term of the contract; and
- b. shall expressly require contractors to require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

49. This Agreement shall become effective on the date this Agreement is signed by the last party to sign it (as indicated by the date stated under that party's signature).

50. This Agreement may only be amended by mutual agreement of DEPARTMENT and COUNTY, expressed in writing and executed and delivered by each.

51. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall be deemed to be but one Agreement.

[THIS SECTION INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, COUNTY and DEPARTMENT have executed this Agreement for the purposes herein expressed on the dates indicated below.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

BY: Nicola Liquori [Seal]
Nicola Liquori
Executive Director & Chief Executive Officer, Florida's Turnpike Enterprise

ATTEST: Devin Carini [Seal]
Executive Secretary

Date: 12/23/2020

Legal Review

BY: [Signature]
Assistant General Counsel

**ORANGE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS**

By: *Ryan W. Brown*
for Jerry L. Demings, Mayor

Date: 12/01/20

ATTEST: Phil Diamond, CPA, County Comptroller

As Clerk of the Board of County Commissioners

BY: *Katie Smith*

Deputy Clerk

Katie Smith

Printed Name

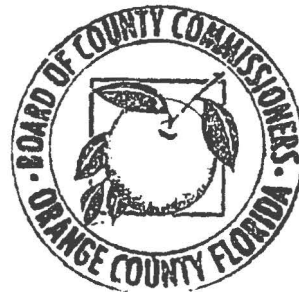


EXHIBIT A - DESIGN VARIATION FOR TRAIL INUNDATION**Submittal/Approval Letter**To: Mario Bizzio, PE
District Design EngineerDate: August 18, 2020Financial Project ID: 430225-4-58-01 New Construction ☒ RRR ☐Federal Aid Number: D519-030-BProject Name: Shingle Creek Regional Trail Phase 1 Segment 3State Road Number: N/ACo./Sec./Sub.: Orange 8/24/29EBegin Project MP: N/AEnd Project MP: N/AFull Federal Oversight: Yes ☐ No ☒Request for Design Exception ☐ , Design Variation ☒

(For Design Exception or Variations Requiring Central Office Approval)

Re-submittal: Yes ☐ No ☐ Original Ref# _____ - _____ - _____

Requested for the following element(s):

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> Design Speed | <input type="checkbox"/> Lane Widths | <input type="checkbox"/> Shoulder Widths | <input type="checkbox"/> Bridge Widths |
| <input type="checkbox"/> Structural Capacity | <input type="checkbox"/> Vertical Clearance | <input type="checkbox"/> Grades | <input type="checkbox"/> Cross Slope |
| <input type="checkbox"/> Superelevation | <input type="checkbox"/> Horizontal Alignment | <input type="checkbox"/> Vertical Alignment | <input type="checkbox"/> Stopping Sight Distance |
| <input checked="" type="checkbox"/> Horizontal Clearance <input checked="" type="checkbox"/> Other <u>Trail Inundation [FDM 224.1.1 (5)]</u> | | | |

The scope of work for this project includes the construction of Phase 1, Segment 3 of the Shingle Creek Multi-Use Trail in Orange County, Florida. A segment of this project will run within the SR 528 Limited Access (LA) Right-of-Way. On the south side of the SR 528 Bridge over Shingle Creek, the trail enters the LA Right-of-Way as an elevated boardwalk. The trail will run underneath the bridge connecting to and utilizing the existing concrete trail. On the north side of the bridge, the proposed trail will resume as an elevated boardwalk to be constructed within the LA Right-of-Way.

The multi-use trail through the LA Right-of-Way provides a minimum vertical clearance of 8'-10½". The 2020 FDOT Design Manual (FDM), Section 224.8 requires that shared use paths provide a 10-foot vertical clearance from the bottom of the lowest edge of the overhead obstruction to any portion of the path underneath the obstruction or 8-foot vertical clearance under constrained conditions. Therefore, the required minimum vertical clearance for constrained condition in met. Additionally, the 1-year flood event will cause standing water on the existing concrete trail and portions of the proposed concrete boardwalk within the LA Right-of-Way. The 2020 FDM, Section 224.1.1 requires the underpass pathway to remain free from standing water up to and including the 10-year storm event. In addition to the proposed design, three additional alternatives were considered. Of the three alternatives, only one alternative would not either require a Design Variation for trail inundation due to a 10-year storm event (FDM 224.1.1) or cause a constrained vertical clearance condition (FDM 224.8). All alternatives required the raising of the existing profile grade line along SR 528 over Shingle Creek. Based on the coordination between Orange County and Florida Turnpike Enterprise System (FTE), the proposed design with Maintenance Agreement, with constrained vertical clearance, was agreed upon during the design of the widening of SR 528 over Shingle Creek (FPID 406090-5-52-01), which has now been constructed.

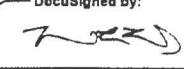
A design variation is being requested for trail inundation from up to and including the 10-year storm event along the proposed shared use trail through the LA Right-of-Way at SR 528.

Recommended by:

Jocelyn M. Haisch-Linn
Jocelyn M. Haisch-Linn, PE No. 60103
DRMP, Inc.

Date: 8/18/2020

Approvals:

Mario J Bizzio Digitally signed by Mario J Bizzio Date: 2020.08.24 08:55:53 -04'00'	
_____ Date _____	N/A _____ Date _____
Mario Bizzio, PE District Design Engineer	District Structures Design Engineer
N/A _____ Date _____	N/A _____ Date _____
State Roadway Design Engineer	State Structures Design Engineer
DocuSigned by:	
	Date 12/15/2020 9:09 AM EST
_____ Date _____	N/A _____ Date _____
Will Watts, PE State Chief Engineer	FHWA Division Administrator

NOTE: ACCESS TO TURNPIKE LA ROW IS FOR TRAIL CONSTRUCTION AND MAINTENANCE PURPOSES ONLY AND IS NOT A PERPETUAL GENERAL RIGHT OF ACCESS TO THE TURNPIKE LA ROW

LA ROW Line
& Limit Line

Point of
ingress/egress for
Maintenance (via
future Segment 2)

Exist. 36" DIP
Force Main

MARTIN ANDERSON BEACHLINE EXPY SR 528

Maintained by
Orange County
Parks & Recreation

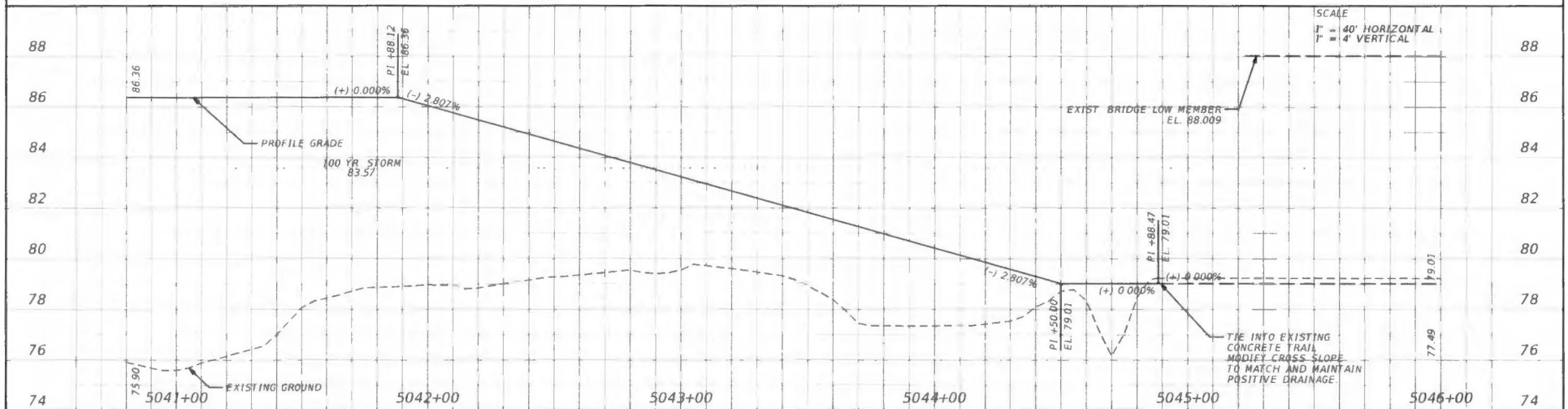
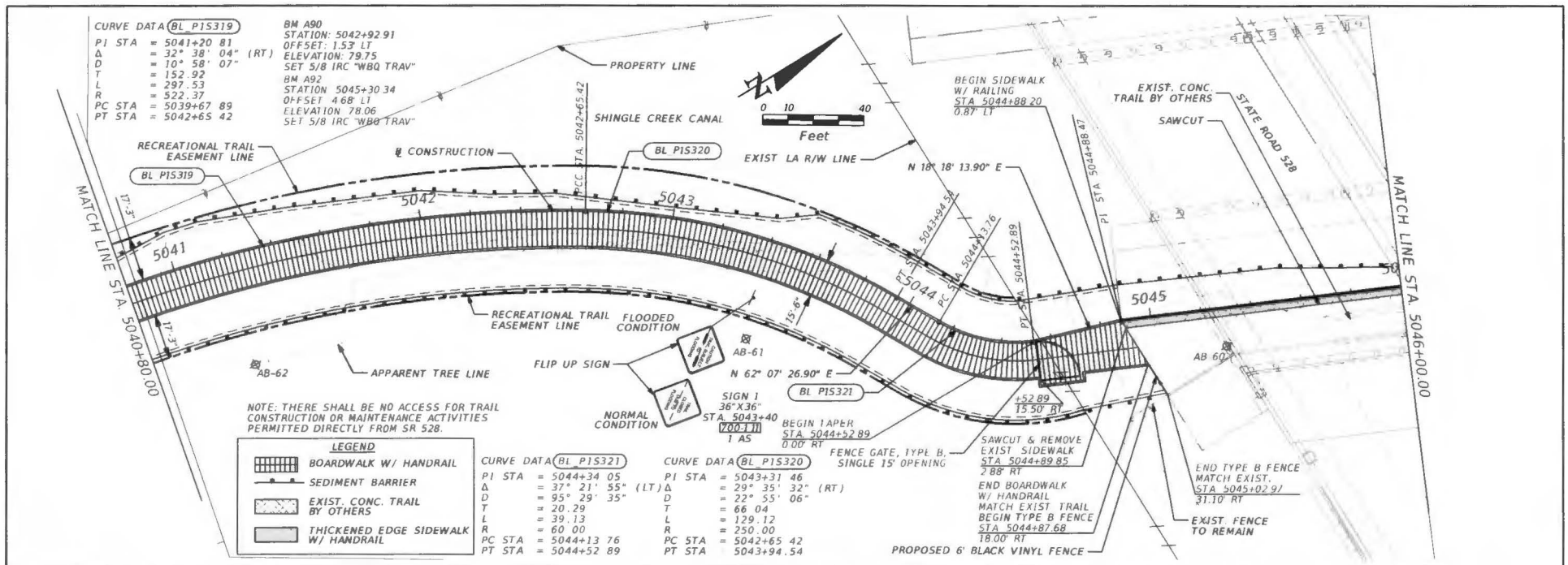
Point of
ingress/egress for
Maintenance

LA ROW Line
& Limit Line

Exhibit B – Maintenance Graphic

APPENDIX C

Plans



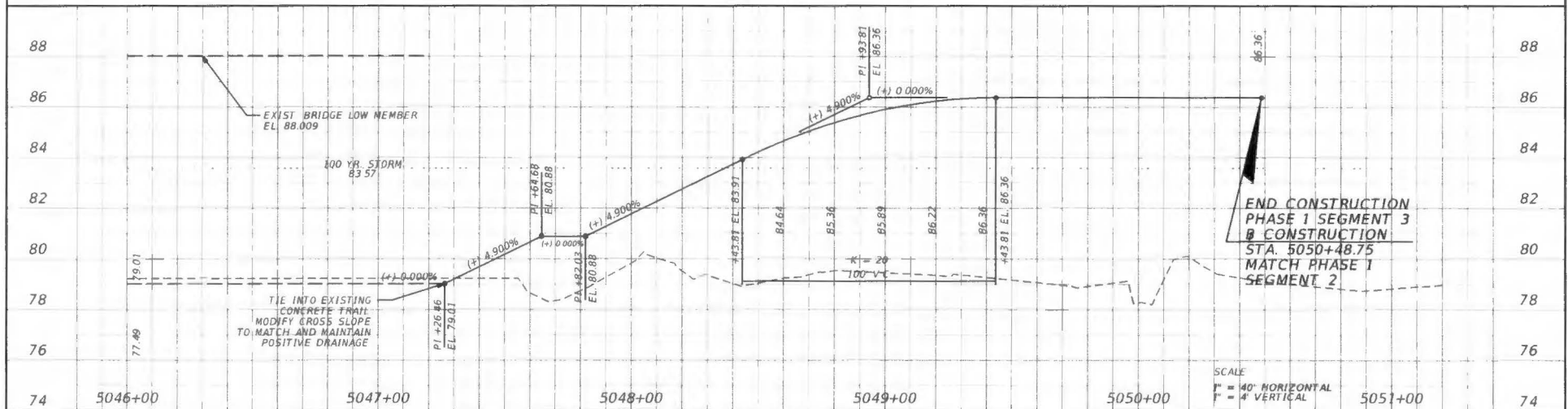
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DATE	DESCRIPTION	DATE	DESCRIPTION	WBQ Design & Engineering		ENGINEERING DIVISION					
				301 N. Magnolia Ave. Suite 200 Orlando, FL 32801 Phone 407.839.4300 Fax 407.839.4621 CERTIFICATE OF AUTHORIZATION NO. 6796		4200 SOUTH JOHN YOUNG PARKWAY ORLANDO, FLORIDA 32839 (407) 836-7900				24	

estward

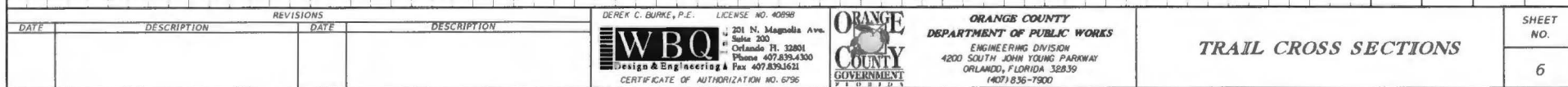
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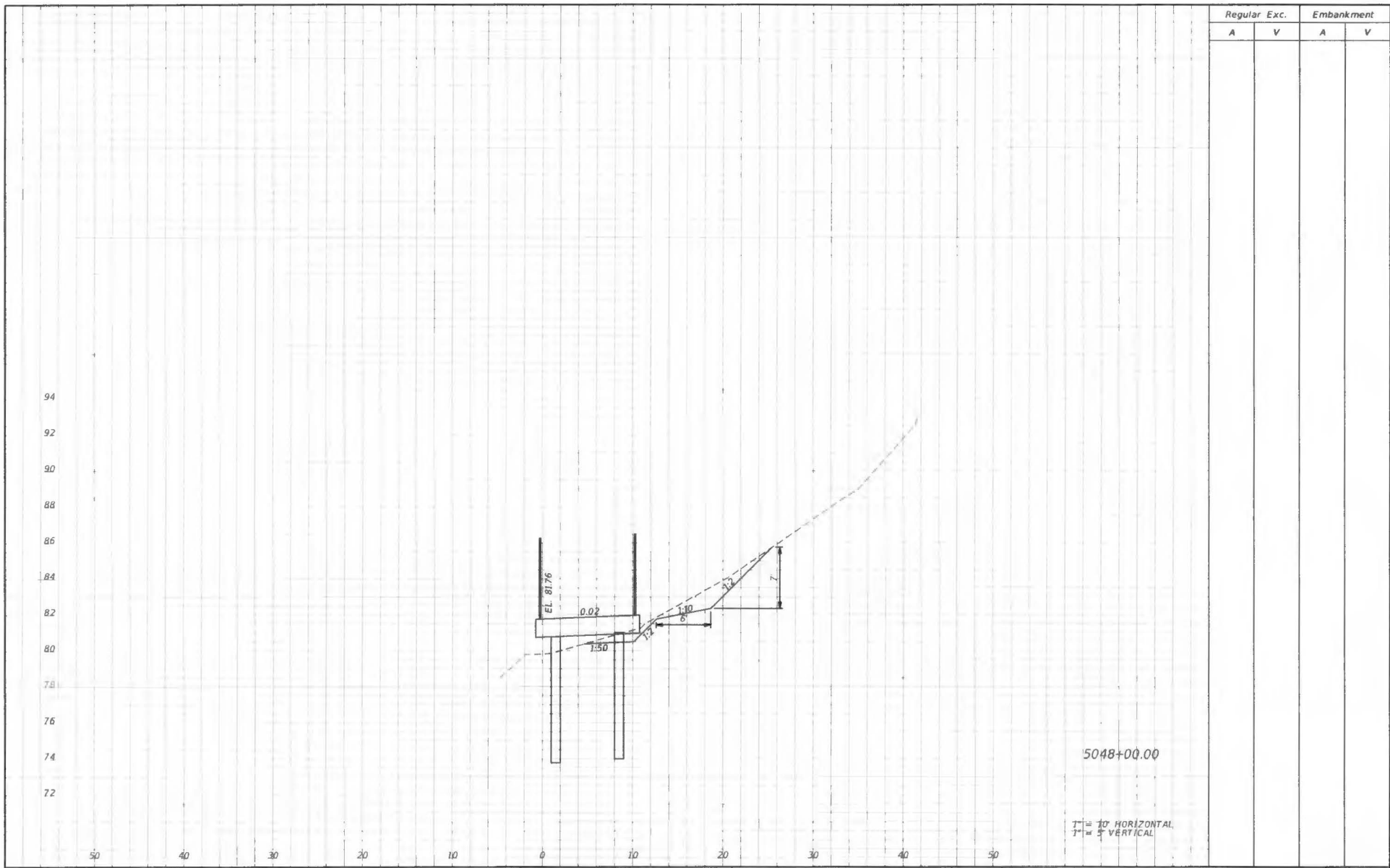
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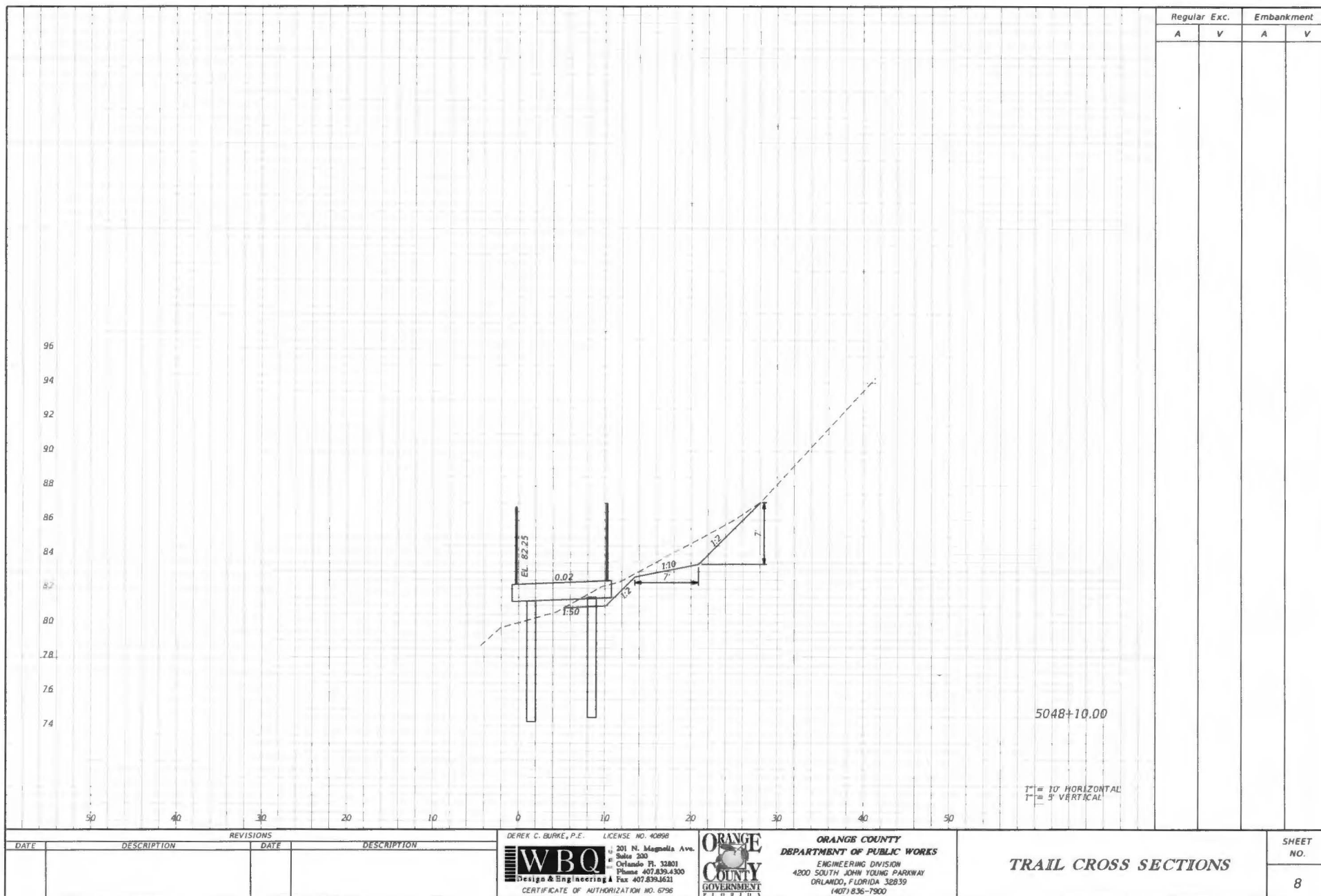
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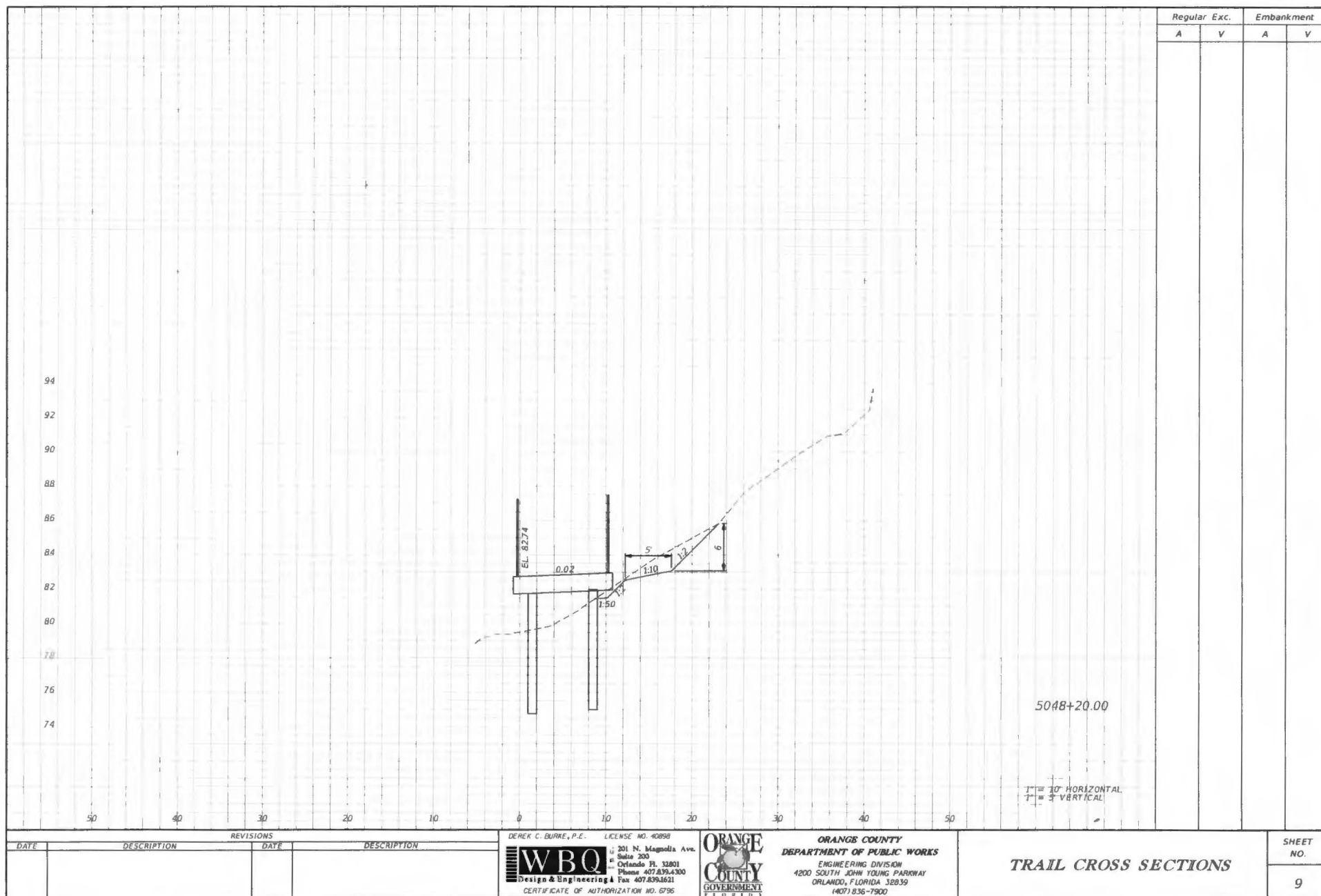


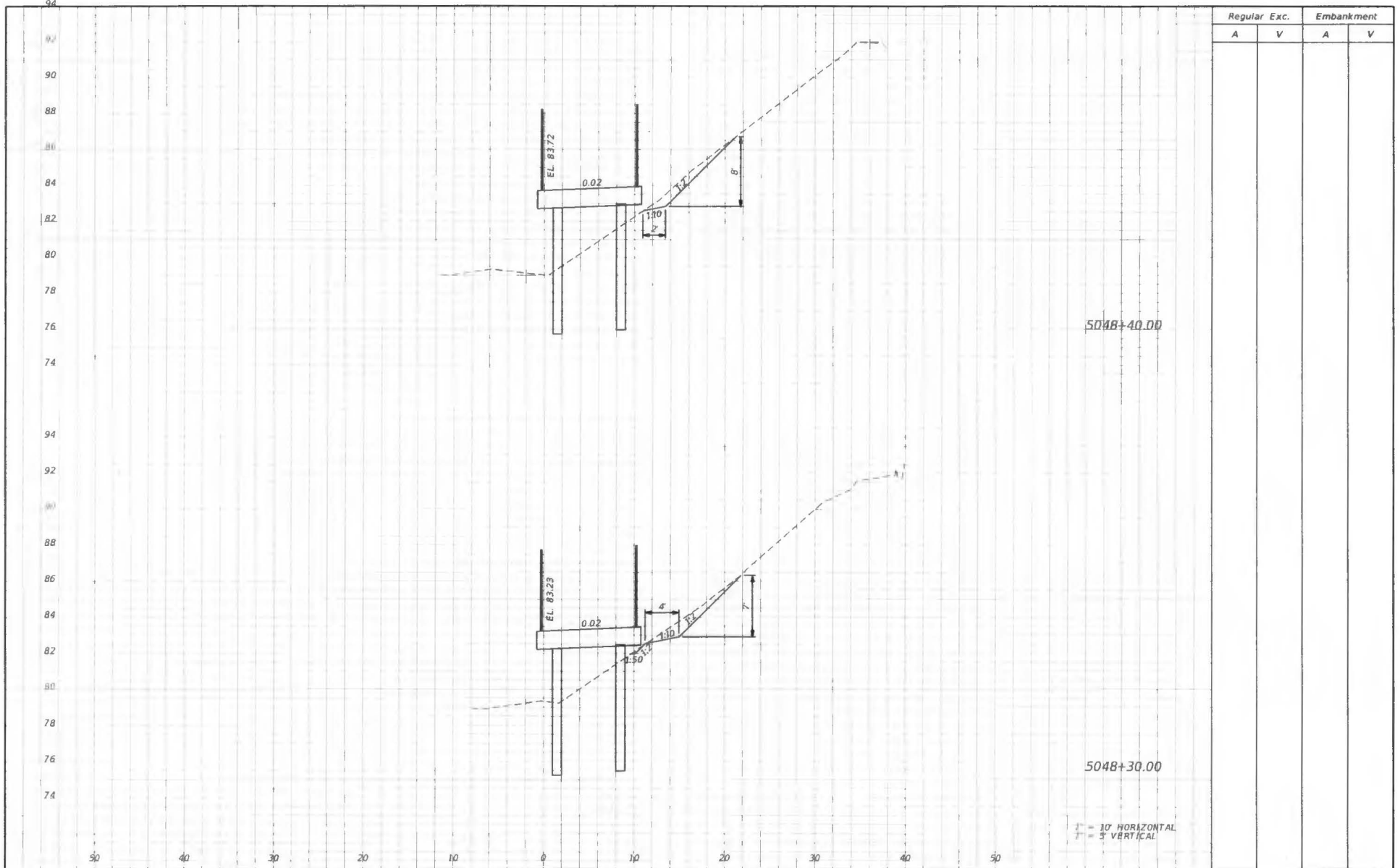


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WBQ Design & Engineering 201 N. Magnolia Ave. Suite 200 Orlando, FL 32801 Phone 407.839.4300 Fax 407.839.1621 LICENSE NO. 40898 CERTIFICATE OF AUTHORIZATION NO. 6796		ORANGE COUNTY DEPARTMENT OF PUBLIC WORKS ENGINEERING DIVISION 4200 SOUTH JOHN YOUNG PARKWAY ORLANDO, FLORIDA 32839 (407) 836-7900	TRAIL CROSS SECTIONS	SHEET NO. 7
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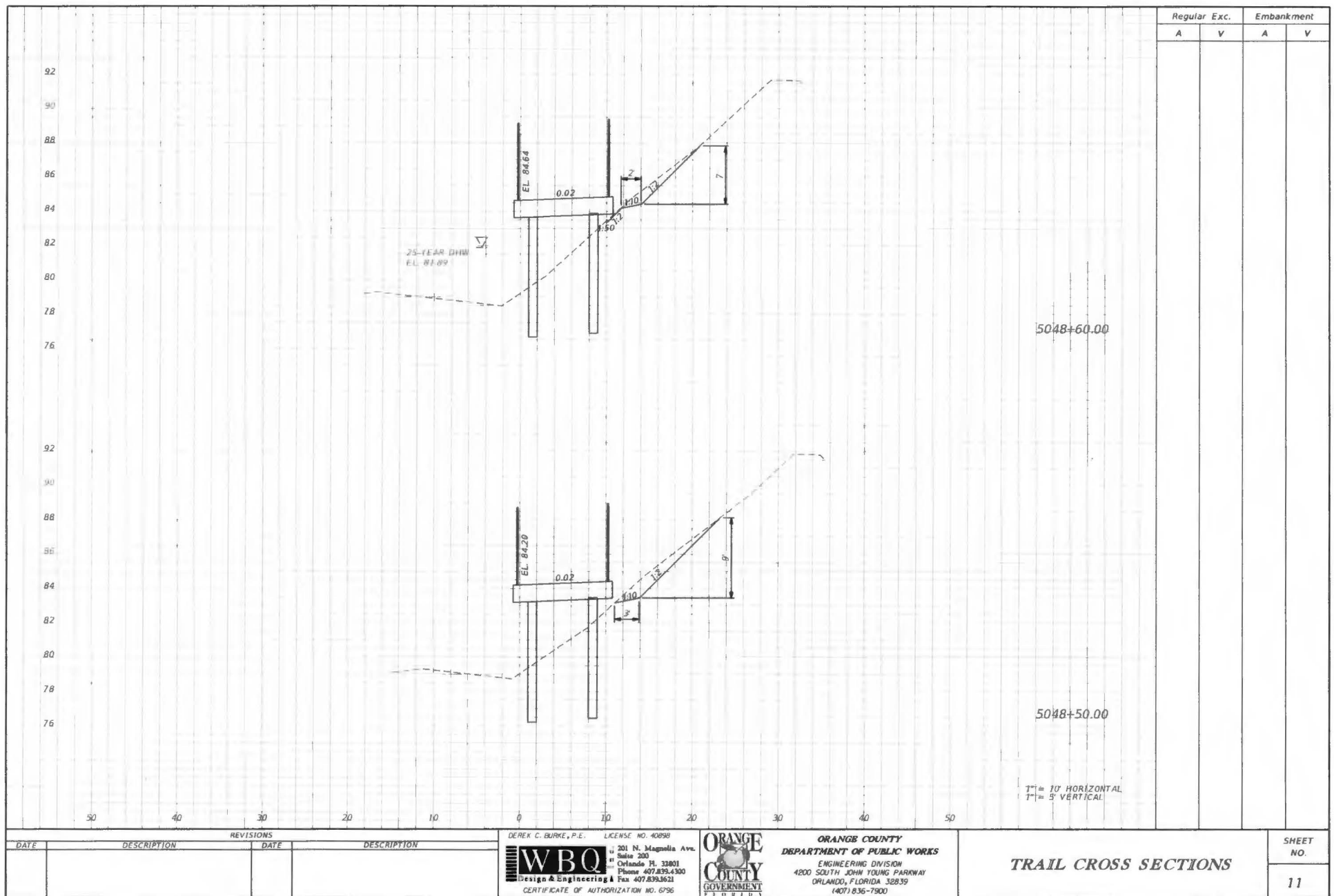
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DATE	DESCRIPTION	DATE	DESCRIPTION	ORANGE COUNTY GOVERNMENT	ENGINEERING DIVISION	
				201 N. Magnolia Ave. Suite 200 Orlando FL 32801 Phone 407.836-4300 Fax 407.836-4321	4200 SOUTH JOHN YOUNG PARKWAY ORLANDO, FLORIDA 32839 (407) 836-7900	10

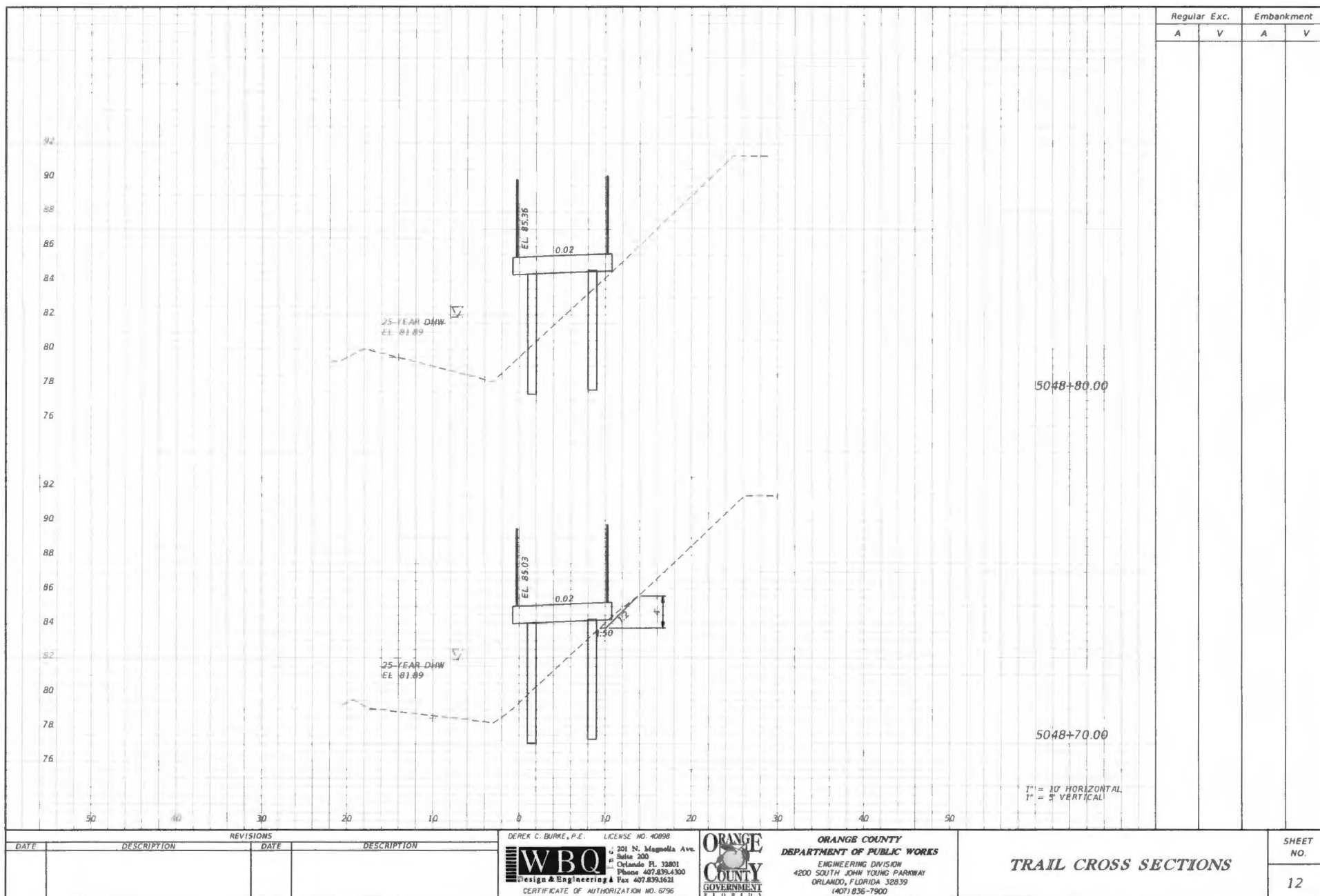
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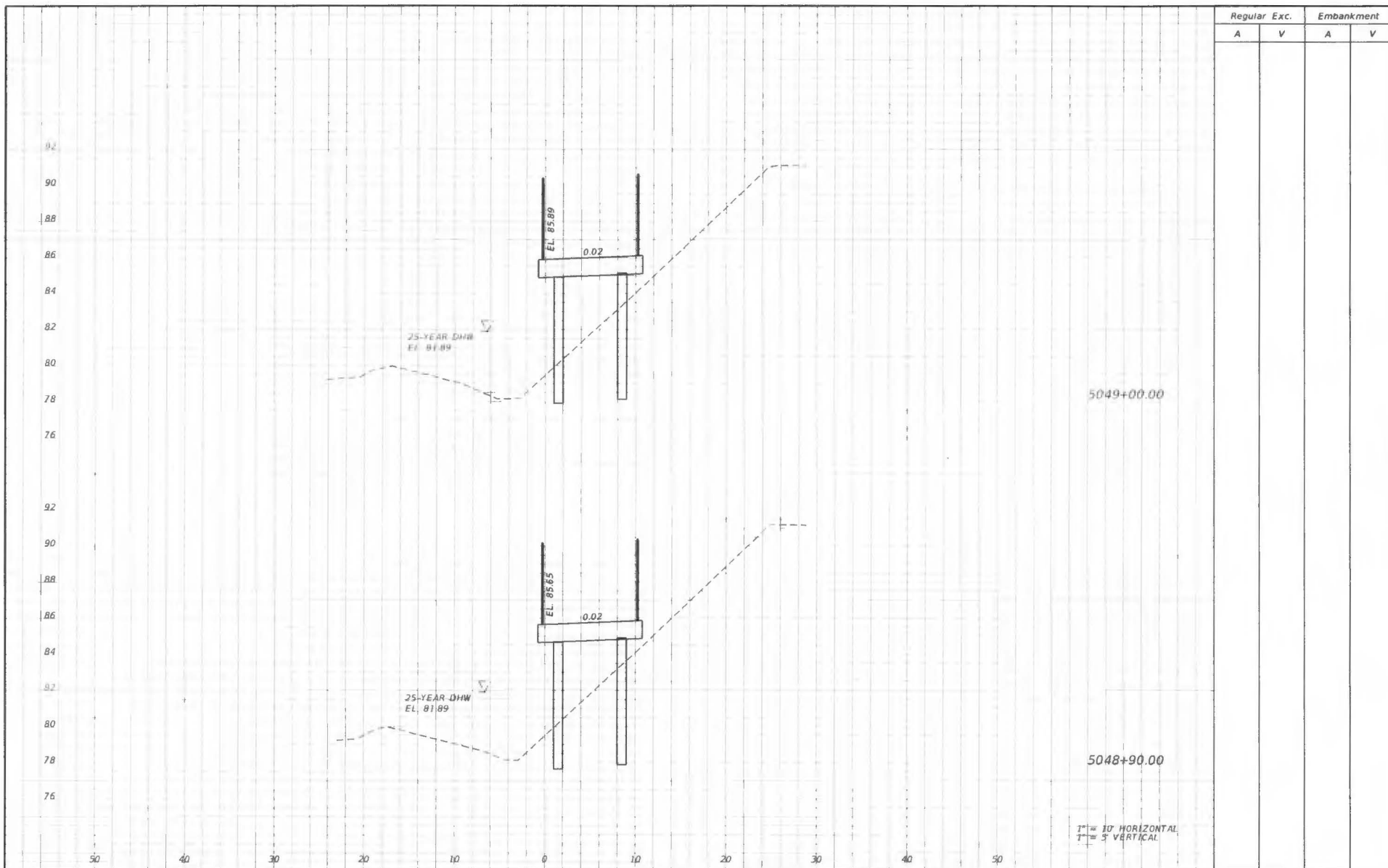
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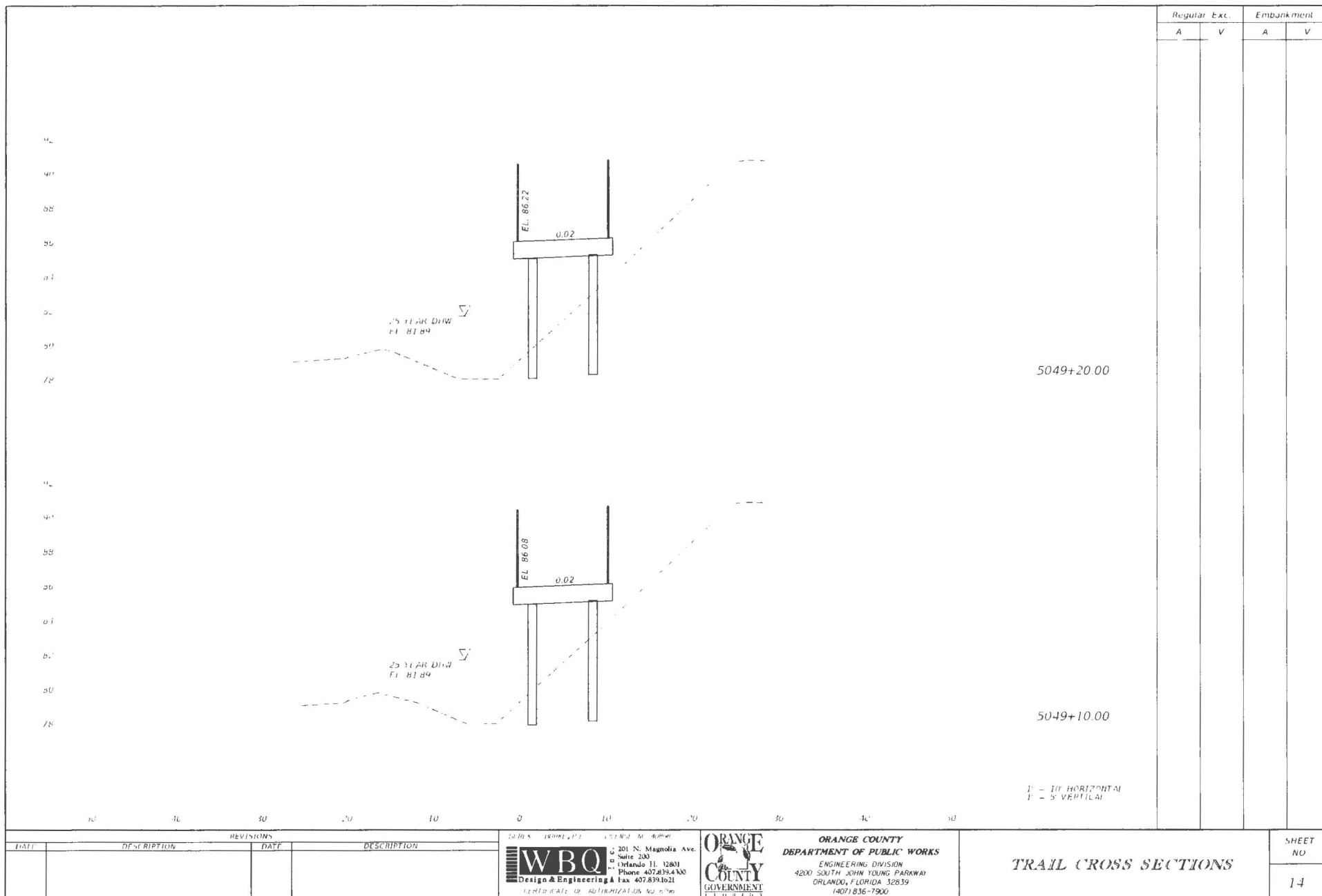


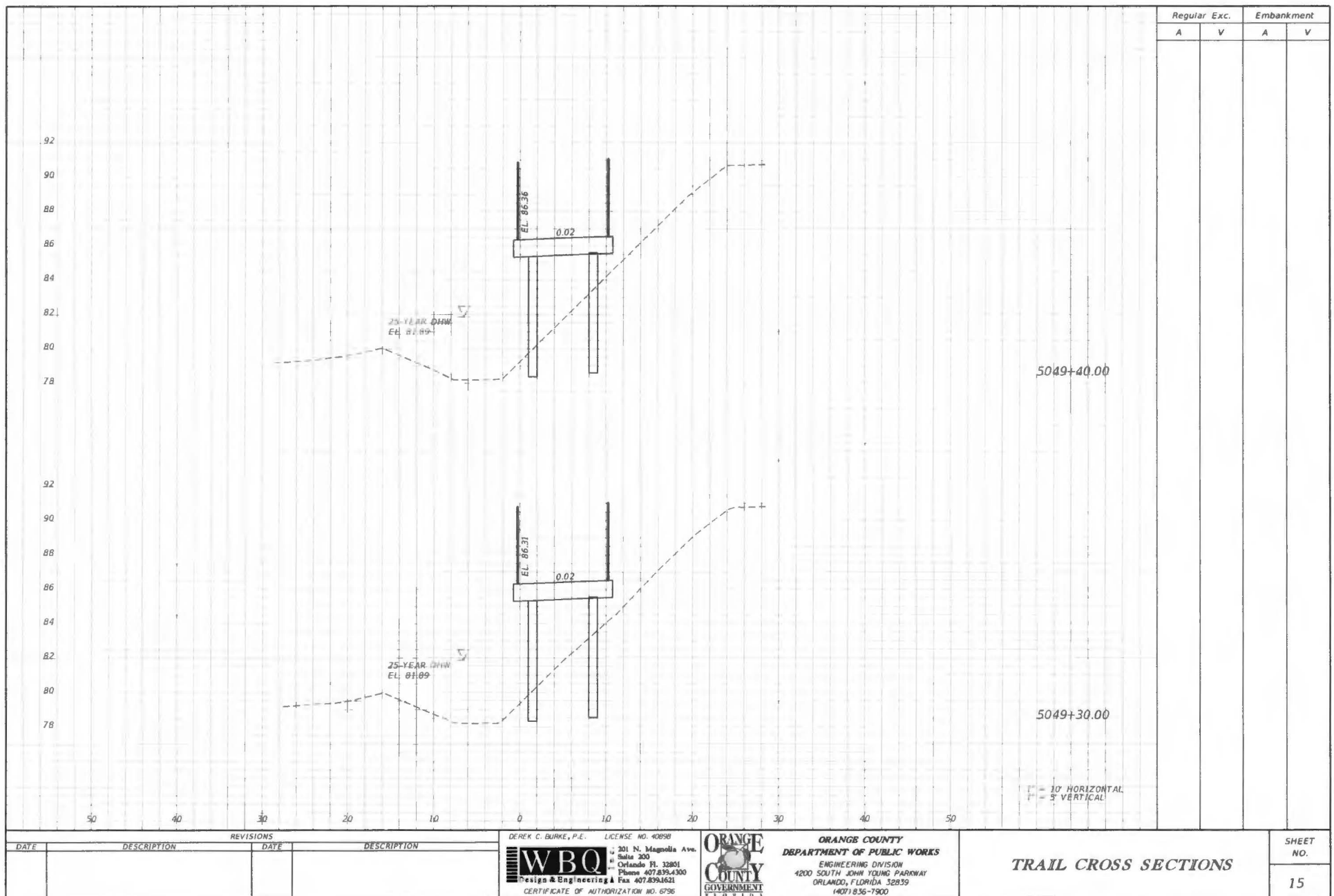


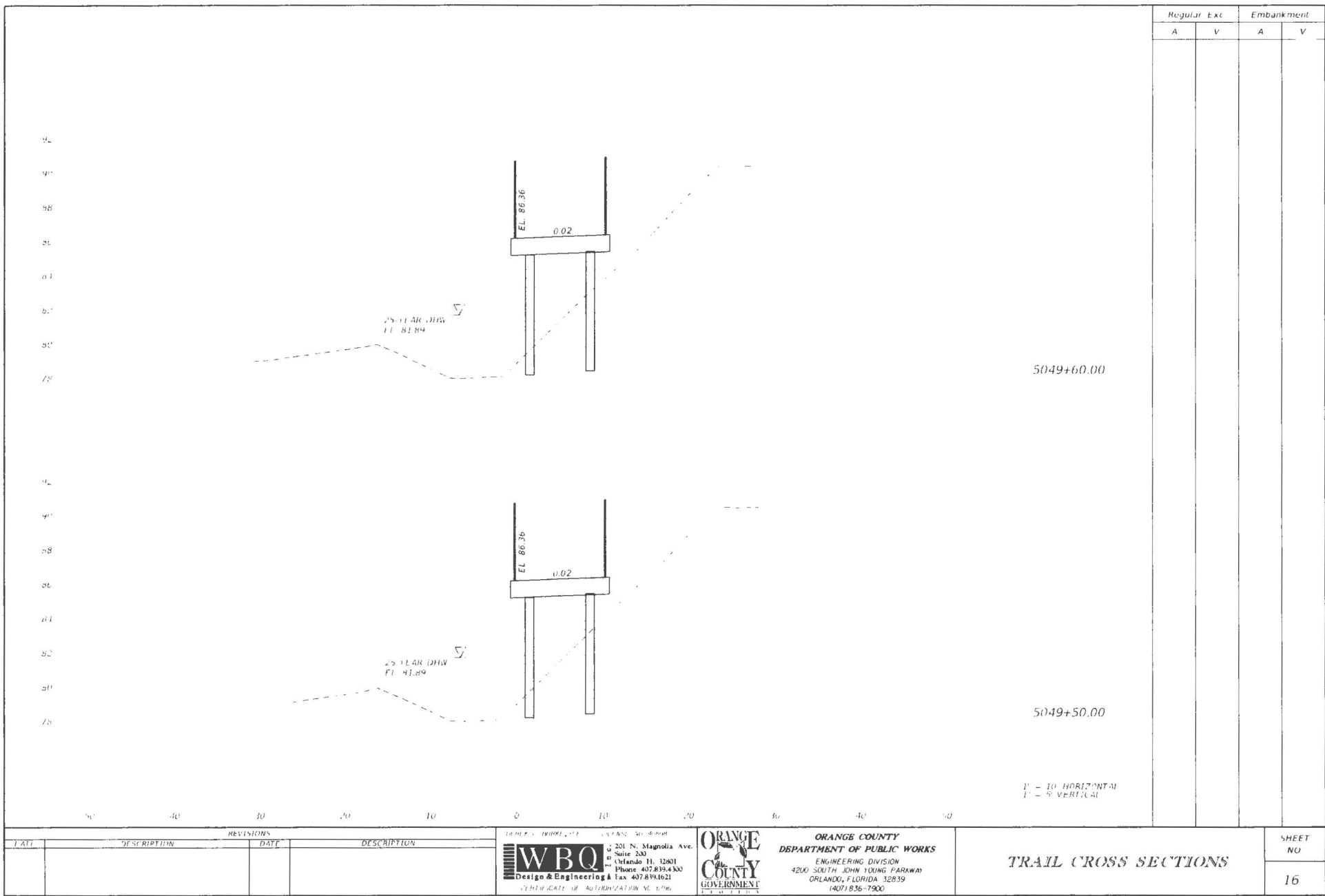
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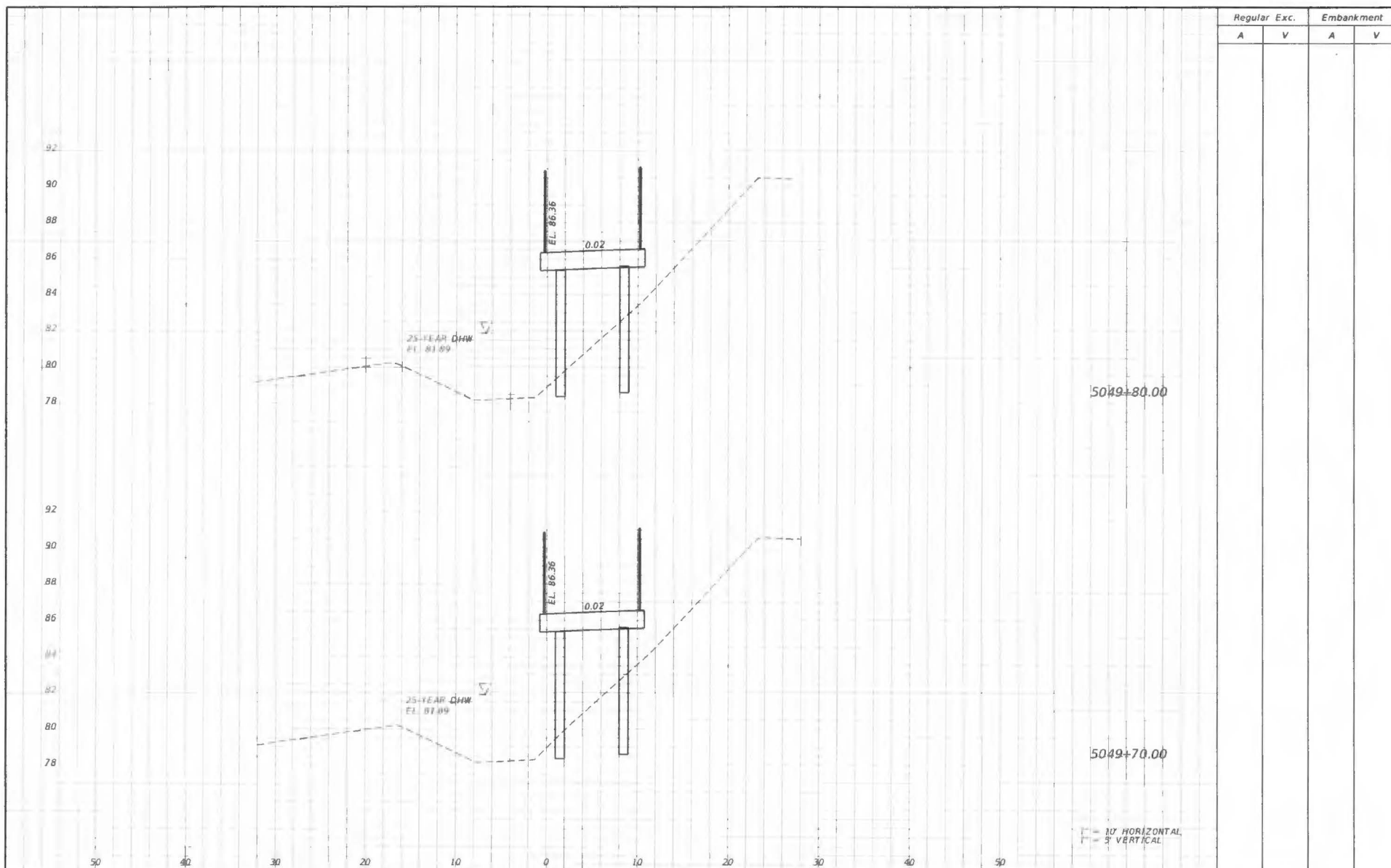
DEBER C. BURKE, P.E. LICENSE NO. 40898
 201 N. Magnolia Ave.
 Suite 200
 Orlando FL 32801
 Phone 407.839.4300
 Design & Engineering Fax 407.839.1621
 CERTIFICATE OF AUTHORIZATION NO. 6796





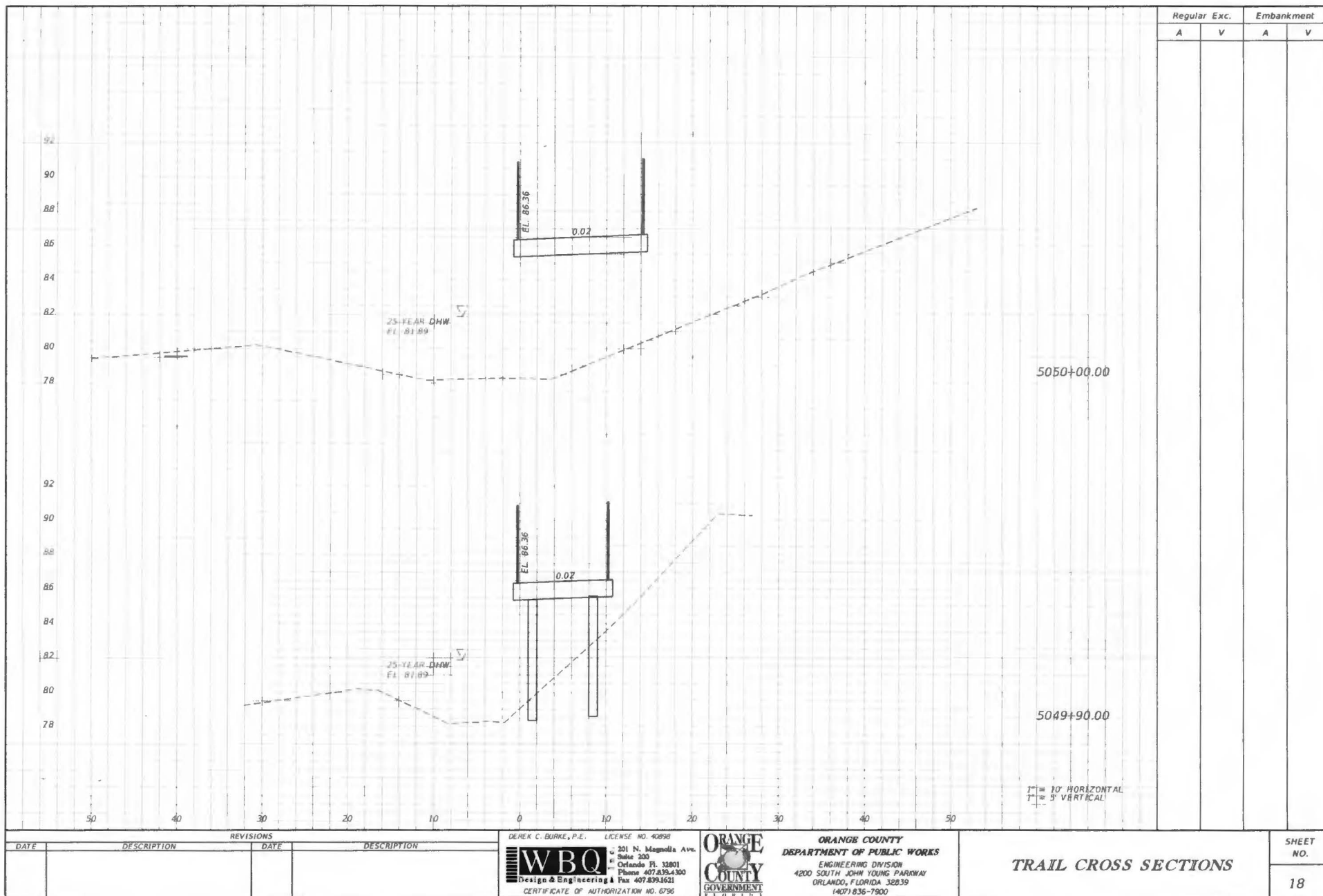








REVISIONS				DENEK C. BURKE, P.E.		LICENSE NO. 40898		ORANGE COUNTY DEPARTMENT OF PUBLIC WORKS		SHEET NO.	
DATE	DESCRIPTION	DATE	DESCRIPTION	 WBQ Design & Engineering	201 N. Magnolia Ave. Suite 200 Orlando FL 32801 Phone 407.839.4300 Fax 407.839.1621	 ORANGE COUNTY GOVERNMENT	ENGINEERING DIVISION 4200 SOUTH JOHN YOUNG PARKWAY ORLANDO, FLORIDA 32839 (407) 836-1900	TRAIL CROSS SECTIONS		17	
				CERTIFICATE OF AUTHORIZATION NO. 6796							



REVISIONS	
DATE	DESCRIPTION

DEREK C. BURKE, P.E. LICENSE NO. 40898
WBO 201 N. Magnolia Ave.
 Suite 200
 Orlando, FL 32801
 Phone 407.839.4300
 Fax 407.839.1621
 CERTIFICATE OF AUTHORIZATION NO. 6796

ORANGE COUNTY
DEPARTMENT OF PUBLIC WORKS
 ENGINEERING DIVISION
 4200 SOUTH JOHN YOUNG PARKWAY
 ORLANDO, FLORIDA 32839
 (407) 836-7900

TRAIL CROSS SECTIONS

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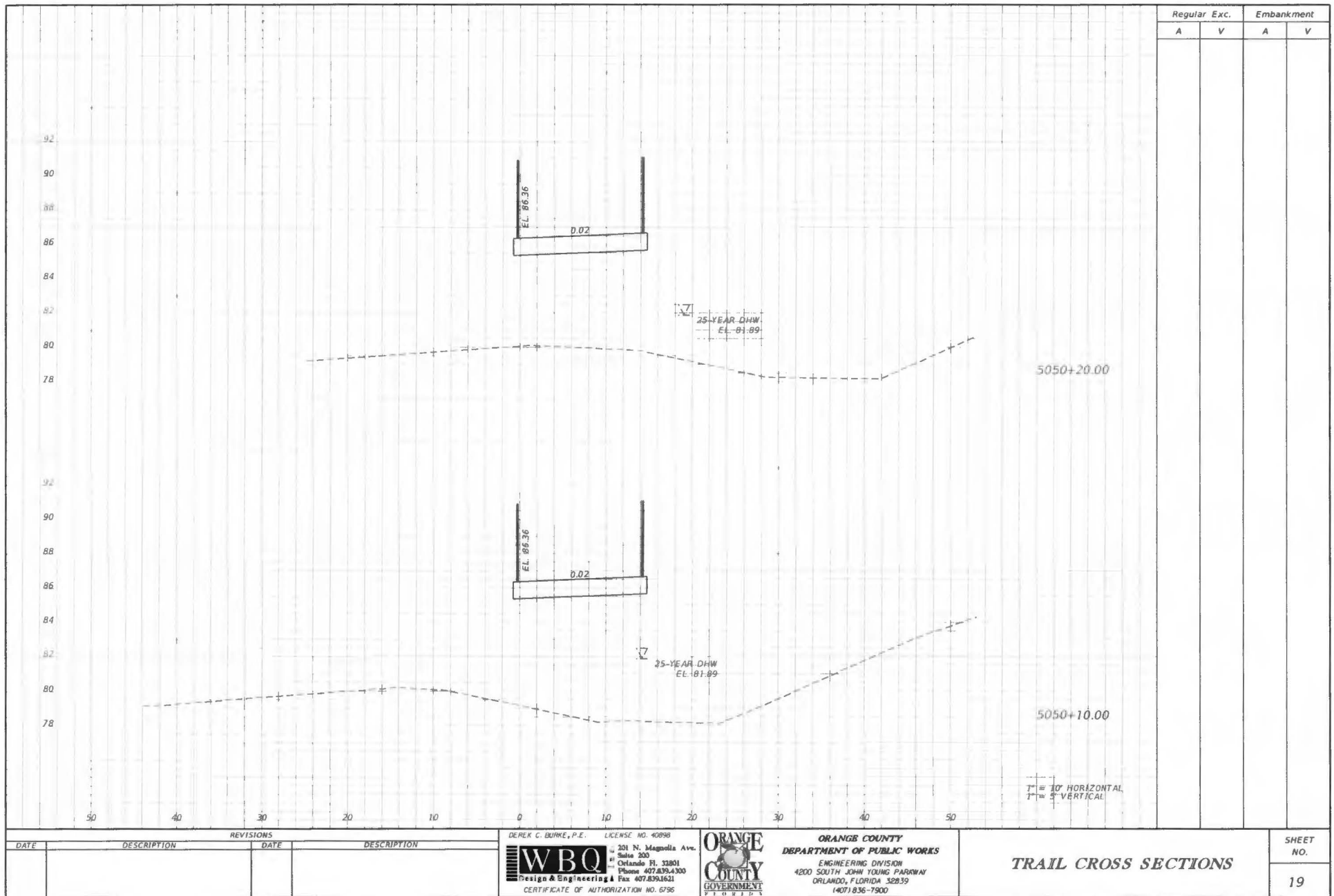




Exhibit B – Maintenance Graphic