



Trevor P. McCourt
Deputy City Attorney

CITY OF PORTSMOUTH

Legal Department
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Portsmouth, New Hampshire 03801
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(603) 610-7234

May 19, 2026

Rick Chellman, Chair
Portsmouth Planning Board

VIA EMAIL ONLY

Re: 94 Langdon Street (LU-25-175)
Cornwall Street Right of Way

Dear Chair Chellman:

Introduction

Planning Staff have asked me to review the history of the Cornwall Street right of way extending to the north of McDonough Street. The applicant for the above-cited land use application represents that the City may not have any rights to Cornwall Street north of McDonough Street, and does not have rights to McDonough Street crossing 94 Langdon Street (the "Property") to the railroad. Based on my research, which is described below, I believe that (1) Cornwall Street is a public right of way extending from Islington Street through to the railroad and (2) therefore, in order for the present application to proceed, a formal discontinuance of a portion of Cornwall Street by the City Council is necessary.

The central issue is whether Cornwall Street, as it was created, crosses the Property, and if so, whether it was ever discontinued by the City Council. If not, the right of way bifurcates the parcel as presented, and the current proposal cannot proceed in its present form.

This review was prompted by a review of Note 11 on the Existing Conditions Plan prepared by Haley Ward, which suggests that City action in 1965 may have released rights in the portion of Cornwall Street that previously crossed the property, together with an offer to convey an easement for existing sewer infrastructure in exchange for release of any remaining City rights in that area.

Factual Background

In response to the request of Planning staff, I conducted preliminary research into the history of Cornwall Street. The materials reviewed to date appear to provide substantial evidence that Cornwall Street was dedicated to public use, constructed and therefore accepted by the City, and that no formal discontinuance has been identified for the portion extending north of McDonough Street to the railroad property.

Attached are two plans depicting historical conditions on Cornwall Street. The first is a portion of the subdivision map by which Cornwall Street was dedicated and put to public use. The map is dated 1815 and was recorded at the Rockingham County Registry of Deeds in Book 321, Page 1, on November 10, 1845 (the "1815 Plan"). In relevant part, the plan depicts Cornwall Street extending from the northerly sideline of Islington Street through to the North Mill Pond.

The second attached plan is a right-of-way drawing prepared by the Boston and Maine Railroad Company, dated June 30, 1914 (the "1914 Plan"). Upon information and belief, between the time of the recordation of the 1815 Plan and the 1914 Plan, the railroad took by eminent domain property along the North Mill Pond. The 1914 Plan shows the location of the railroad relative to the North Mill Pond and to Cornwall Street. It indicates that, as of 1914, Cornwall Street extended from the northerly edge of McDonough Street to the edge of what remains railroad property today. The plan also depicts buildings constructed on parcels fronting Cornwall Street north of McDonough Street.

Taken together, these plans appear to show that Cornwall Street was dedicated and laid out from Islington Street to the railroad parcel. I also located materials in the Planning Department's files indicating that, as of July 1965, the Planning and Assessing Departments were unable to identify any City action discontinuing the portion of Cornwall Street north of McDonough Street. Consistent with that information, I reviewed City Council meeting minutes from 1965 and 1966 and did not locate any reference to a discontinuance of Cornwall Street.

Applicable Law

A street may be created either by express act or by implication. Hersh v. Plonski, 156 N.H. 511 (2007). Once public rights of way are established, those rights continue indefinitely unless they are formally discontinued by public action. Blagbrough Family Realty Trust v. A & T Forest Products, Inc., 155 N.H. 29 (2007). Highways cannot be extinguished by adverse possession. Williams v. Babcock, 116 N.H. 819 (1976). Moreover, there is a strong presumption against discontinuance. Davenhall v. Cameron, 116 N.H. 695 (1976). As the Court explained in Davenhall, "highway discontinuance is not favored in the law . . . and the burden is upon the party who asserts discontinuance to prove it by clear and satisfactory evidence." Id. at 697.

Analysis

Applied here, there is evidence that Cornwall Street was dedicated to public use through recordation of the subdivision plan in 1815. There is also evidence of acceptance of the full extent of Cornwall Street, including the portion north of McDonough Street extending at least to the railroad property. Additional support is provided by the public sewer line running beneath Cornwall Street from McDonough Street to the railroad property. The Haley Ward survey notes that this sewer line may be quite old, as it is constructed of brick.

By contrast, no evidence has been identified showing the discontinuance of any portion of Cornwall Street. As noted above, the City records I have reviewed to date would indicate that no discontinuance occurred at least as recently as 1966.

Taken together, this information and legal presumptions described above lead to a presumption that the City still holds a right of way interest in Cornwall Street from Islington Street through to the railroad property. Additional evidence may yet exist, and a discontinuance could still be pursued prospectively if appropriate. At present, however, the applicant bears the burden of proving discontinuance. Accordingly, unless and until competent evidence of discontinuance is presented, the Board should proceed on the basis that public rights in this portion of Cornwall Street may still exist.

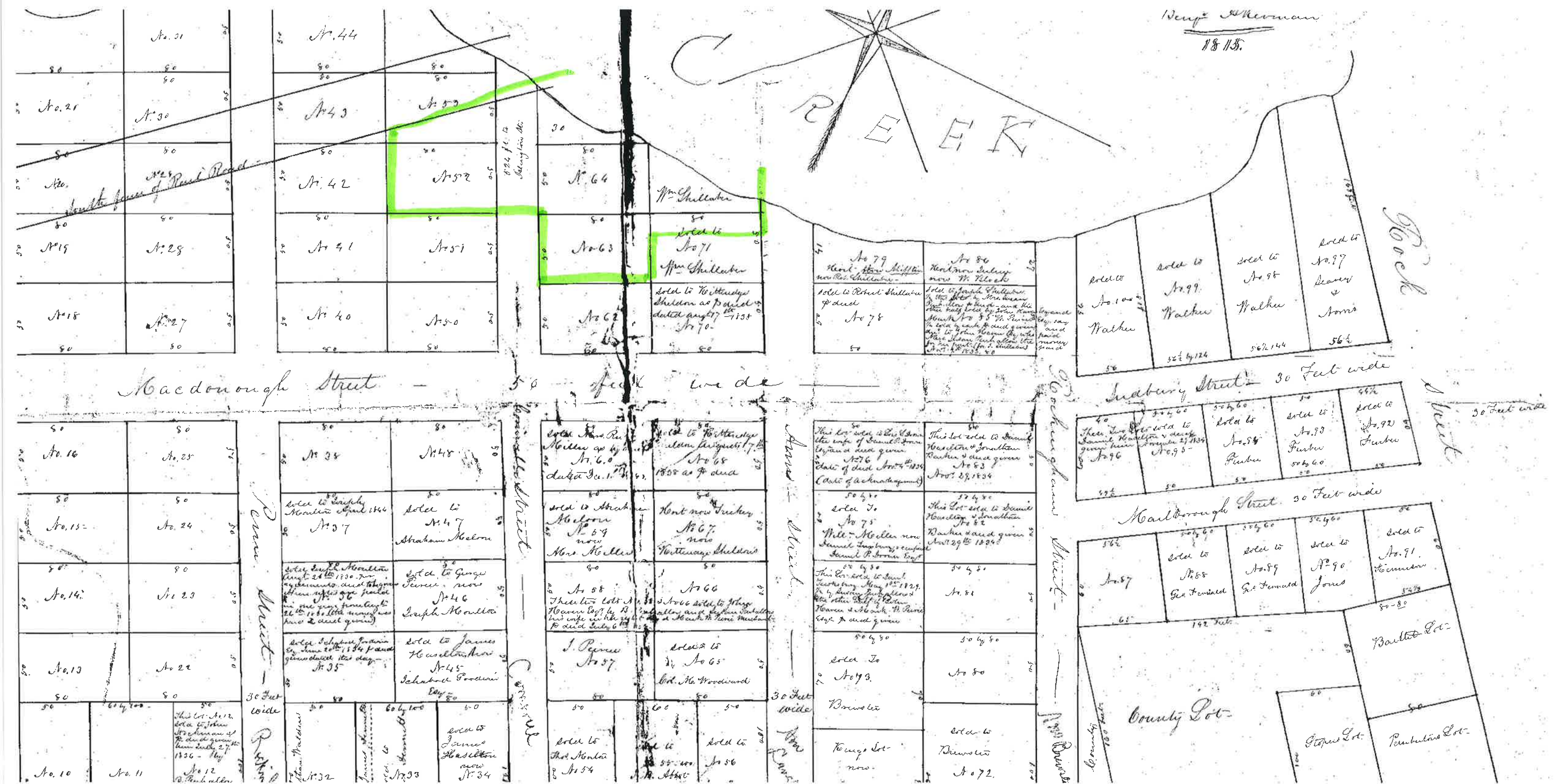
If so, the parcel is bifurcated, and the proposal, as currently presented, cannot go forward. Should the applicant wish to pursue the project in that circumstance, the proper course is to seek discontinuance through the required public process, including notice to abutters, a public hearing, Planning Board recommendation, and City Council action.

Sincerely,

A handwritten signature in black ink, appearing to read 'Trevor P. McCourt', written over a horizontal line.

Trevor P. McCourt
Deputy City Attorney

cc: Peter Pritz, Director of Planning and Sustainability
Peter Stith, Planning Manager



HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgirlaw.com

August 18, 2026

The Honorable Mayor Deaglan McEachern
Portsmouth City Council
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Petition for Discontinuance of Abandoned Portion of Cornwall Street Pursuant to
NH RSA 231:43**

Dear Mayor McEachern and City Council Members:

This office represents Regan Electric Company, Inc. ("Regan Electric"), owner of real property located at 98 Cornwall Street (Tax Map 139, Lot 1) ("98 Cornwall"). Please accept this submission as Regan Electric's petition pursuant to RSA 231:43 to discontinue the abandoned portion of Cornwall Street, consisting of 2,340 S.F., that crosses 98 Cornwall and ends at land of the Boston and Maine Corporation (the Railroad). In support, Regan Electric states as follows.

Background

Cornwall Street was dedicated in 1845 by the recording of a subdivision plan (dated 1815) and was used as a public street to access residential structures on what is now 98 Cornwall from the late 1800's through the 1930's. As laid out, Cornwall Street ends at the northern property line of 98 Cornwall, where it abuts the Railroad, which was originally the southern shore of the North Mill Pond.

In the 1930's Portsmouth Ice and Coal Co., Inc. ("Portsmouth Ice & Coal") acquired the individual lots making up 98 Cornwall and removed the residential structures and blocked off Cornwall Street and began using 98 Cornwall to distribute ice and coal. In 1951, the Receiver for Portsmouth Ice & Coal sold 98 Cornwall to Charles H. Walker and the property was operated by the C.B. Walker Co. as a coal distribution facility. During the 1950's, the existing coal shed was

DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	MATTHEW J. COWAN
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	STEPHEN H. ROBERTS In Memoriam
LAWRENCE B. GORMLEY	JACOB J.B. MARVELLEY	CHRISTOPHER P. MULLIGAN	OF COUNSEL:
R. PETER TAYLOR	GREGORY D. ROBBINS	STEPHANIE J. JOHNSON	SAMUEL REID &

extended across the width of Cornwall Street, physically obstructing entry to 98 Cornwall. This coal shed was removed in the late 1970's, leaving a concrete pad and retaining wall in place. In 1980, Charles H. Walker sold 98 Cornwall and after several intervening owners Regan Electric purchased it in 1992.

Cornwell Street has not physically existed on 98 Cornwall for approximately 90 years and there is no visible evidence of it today. Under RSA 229:5, VII, the portion of Cornwall Street located on 98 Cornwall was rendered a Class VI road, based on the City not maintaining and repairing it in suitable condition for travel for a period of 5 successive years or more. The City's tax maps do not show Cornwall Street as being located on 98 Cornwall and Regan Electric has always paid property taxes on the Cornwall Street land located on 98 Cornwall, as if it owned the fee title.

Supporting Exhibits

Based upon our review of relevant title records, Cornwall Street and the surrounding lots were created (and the roadways dedicated) pursuant to a plan entitled "Plan of the Rock Field in the Town of Portsmouth," prepared by Benjamin Akerman, dated 1815, and recorded in the Rockingham County Registry of Deeds as Plan 00562 on November 10, 1845 (the "1815 Plan"). Exhibit 1. The 1815 Plan shows Cornwall Street extending to the shore of Islington Creek, a body of water now known as the North Mill Pond, and the 98 Cornwall property as consisting of approximately seven separate lots. Id. Also attached is a Certified Sanborn Map report showing the history of 98 Cornwall over time from 1887 through 1980 (the "Sanborn Maps"). Exhibit 2. The 1949 Sanborn Map shows that the buildings that had fronted Cornwall Street on the 1920 Sanborn Map had been removed, and the separate lots merged into one parcel, as it exists today, with a coal shed partially obstructing the path of Cornwall Street. Exhibit 2 at p. 5. The title history suggests the section of Cornwall Street located on 98 Cornwall was abandoned between 1930 and 1940 when Portsmouth Ice & Coal acquired ownership of the 98 Cornwall lots, resulting in the configuration shown on the 1949 Sanborn Fire Map (Exhibit 2 at p. 5). After 1949, the Sanborn Maps show Cornwall Street ending at 98 Cornwall's property line, with the coal shed extending across the entire width of Cornwall Street until its removal in the late 1970's. Exhibit 2. Today, the City's Tax Map (Exhibit 3) and GIS Map (Exhibit 4) both show Cornwall Street stopping at 98 Cornwall's property line, rather than continuing through that property to what is now the Railroad, as shown on the 1815 Plan.

The portion of Cornwall Street bisecting Regan Electric's Property cannot be used as a public way in its current condition. Photos of the area indicate that mature trees, shrubs, and other greenery have grown into the untraveled portion of Cornwall Street. (Exhibit 5). In addition, the Draft Street Discontinuance Plan prepared in support of Regan Electric's request shows a chain

link fence and a concrete retaining wall from the old coal shed, spanning across Cornwall Street at 98 Cornwall's property line. (Exhibit 6).

Justification

While Cornwall Street is a Class V road, the portion of Cornwall Street located on 98 Cornwall has not been maintained and repaired by the City of Portsmouth in suitable condition for travel for a period exceeding five years, rendering it a Class VI road pursuant to RSA 229:5, VII. As indicated on the attached exhibits, it is unlikely that this abandoned section of Cornwall Street will ever be improved for use as a public street because it would go nowhere and serve no one. Under RSA 231:43, the unused section of Cornwall Street contained within Regan Electric's Property can be discontinued by City vote. Discontinuance will be consistent with the City's maps, its tax assessments, and Regan Electric's use of its property and will cause no harm or prejudice to the City or its citizens. Any physical extension of Cornwall Street beyond the existing constructed portion would serve no public purpose and no lots require access to this unused portion of Cornwall Street for ingress or egress.

Requested Relief

Regan Electric requests the City Council vote to discontinue the abandoned portion of Cornwall Street located on 98 Cornwall Street, as shown on the Street Discontinuance Plan, subject to the City's continued right to maintain the existing sewer line passing through 98 Cornwall, as expressly provided for in RSA 231:46.

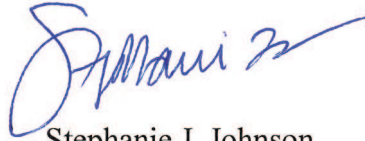
Accordingly, Regan Electric respectfully request that the City Council formally vote to:

- a. Release any and all right, title, and interest of the City in and to the abandoned portion of Cornwall Street beginning at an iron rod found at the southeasterly corner of Tax Map 139, Lot 1 thence South 57°02'43" West a distance of 38.92' to an iron rod, thence turning and running North 33°43'00" West a distance of 74.02' to an iron rod, thence turning and running North 42°03'55" East a distance of 30.95' to an iron rod, thence turning and running South 33°43'00" East a distance of 82' to the point of beginning, being a total of 2,340 s.f.; and
- b. That any such release be made subject to the retention of a sewer easement for the benefit of the City for any existing public utilities within the released area.¹

¹ The Street Discontinuance Plan shows a small portion of an existing public sewer line running through the unused portion of Cornwall Street. Regan Electric proposes reservation of a 20' sewer easement to provide the City access to the sewer line for maintenance and repairs.

Please do not hesitate to contact me for any additional information or if anything further is needed to complete the requested release. Thank you for your time and attention to this request.

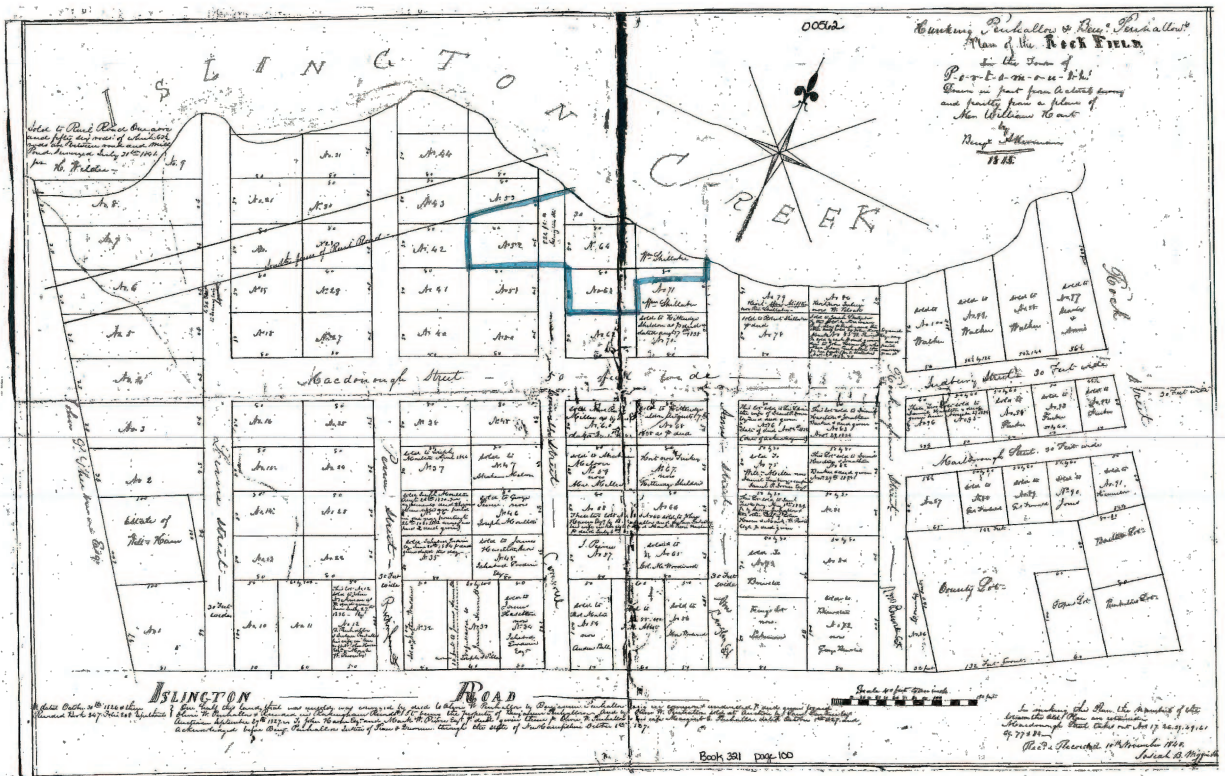
Sincerely,



Stephanie J. Johnson

cc: Regan Electric
Attorney Trevor McCourt

Enclosures: Exhibit 1 – 1815 Plan
Exhibit 2 – Certified Sanborn® Map Report
Exhibit 3 – Tax Map 139
Exhibit 4 – GIS Map
Exhibit 5 – Google Earth Site Photos
Exhibit 6 – Street Discontinuance Plan



Regan Electric
94 Langdon Street
Portsmouth, NH 03801

Inquiry Number: 8162072.3

November 04, 2025

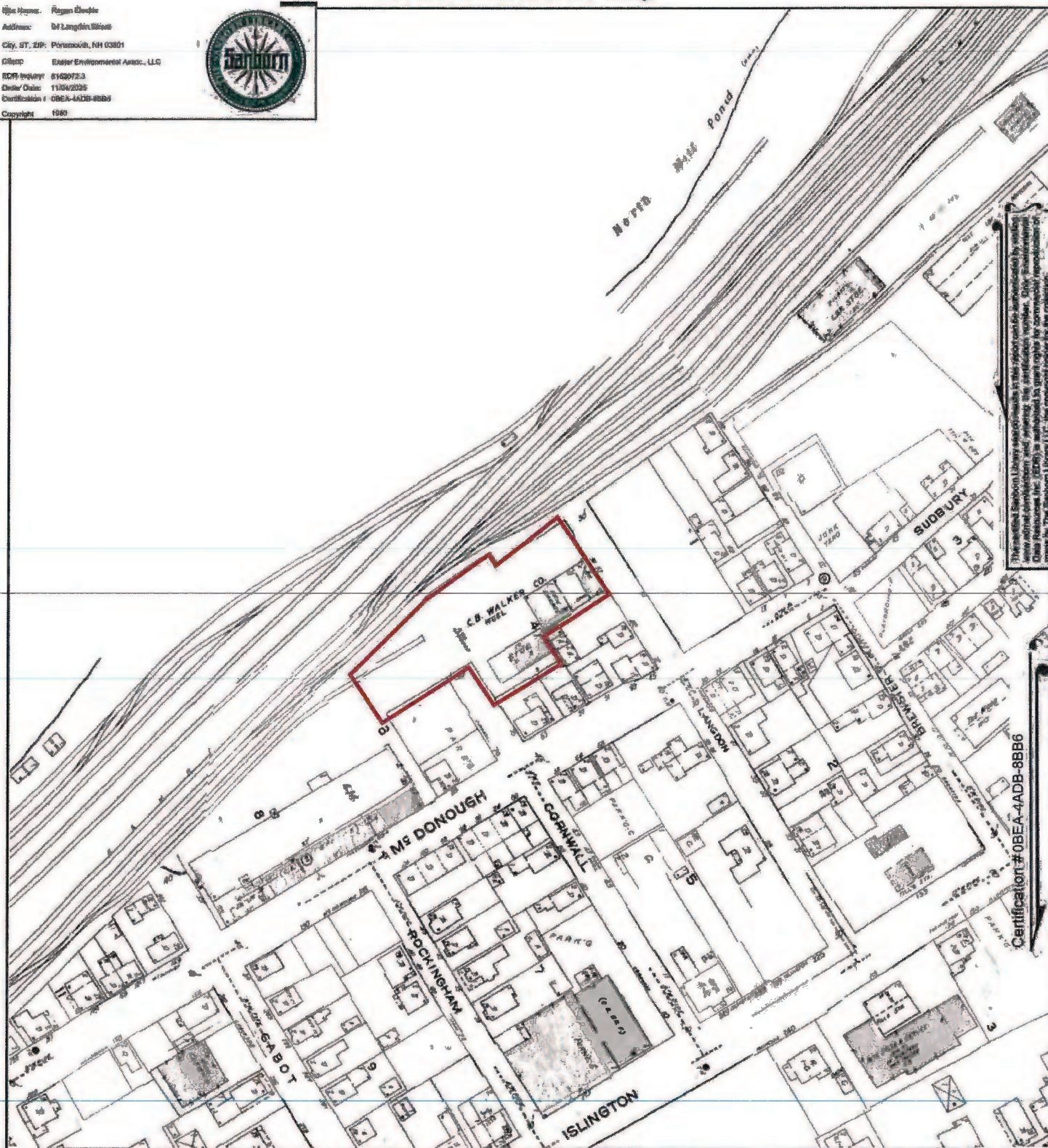
Certified Sanborn® Map Report



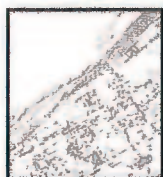
8 Armstrong Road, 4th floor
Shelton, CT 06484
Toll Free: 800.352.0050
www.edrnet.com



1980



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Volume 1, Sheet 4



8162072 - 3 page 6

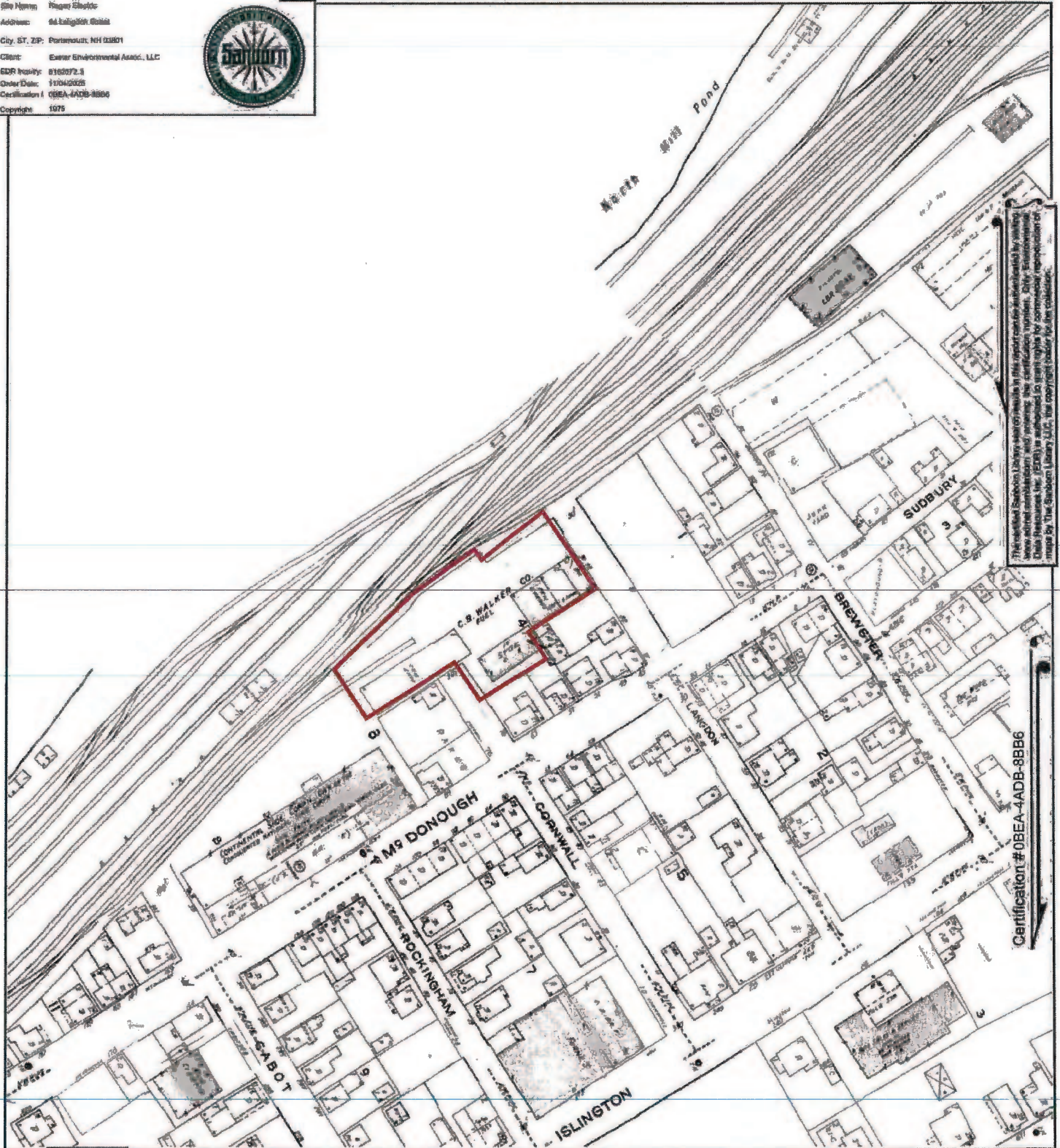


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Address: 64 Exchange Street
City, ST, ZIP: Portsmouth, NH 03801
Client: Exeter Environmental Assoc., LLC
EDR Project: 8162072.3
Order Date: 11/04/2025
Certification: 08EA-4ADB-8BB6
Copyright: 1975



Certified Sanborn® Map

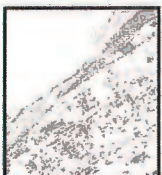
1975



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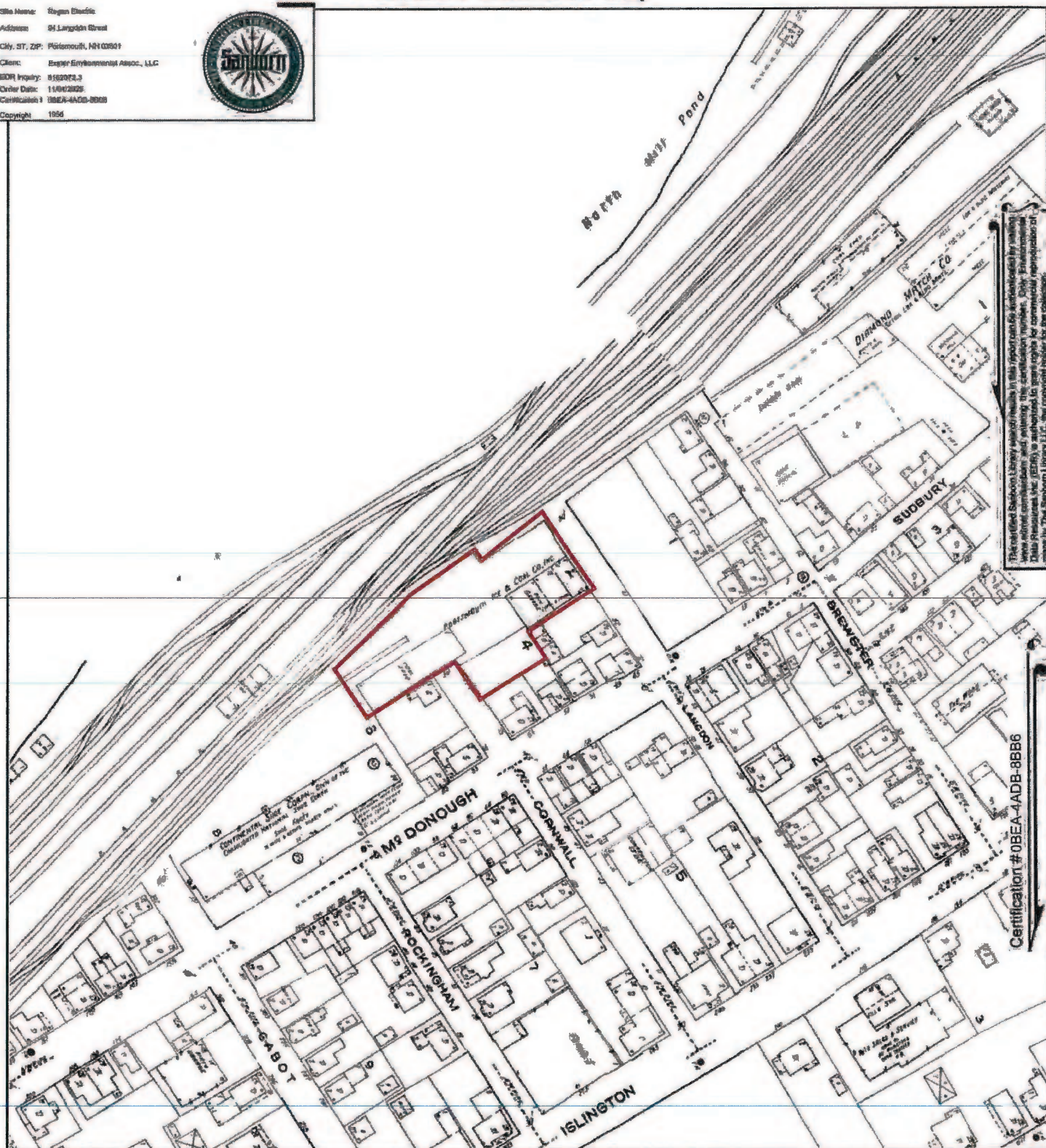




Certified Sanborn® Map

1956

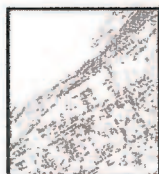
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Address: 94 Langdon Street
City, ST, ZIP: Portsmouth, NH 03801
Client: Egan Environmental Assoc., LLC
SDR Inquiry: 8162072.3
Order Date: 11/07/2025
Certification: 08EA-4ADB-88B6
Copyright: 1956



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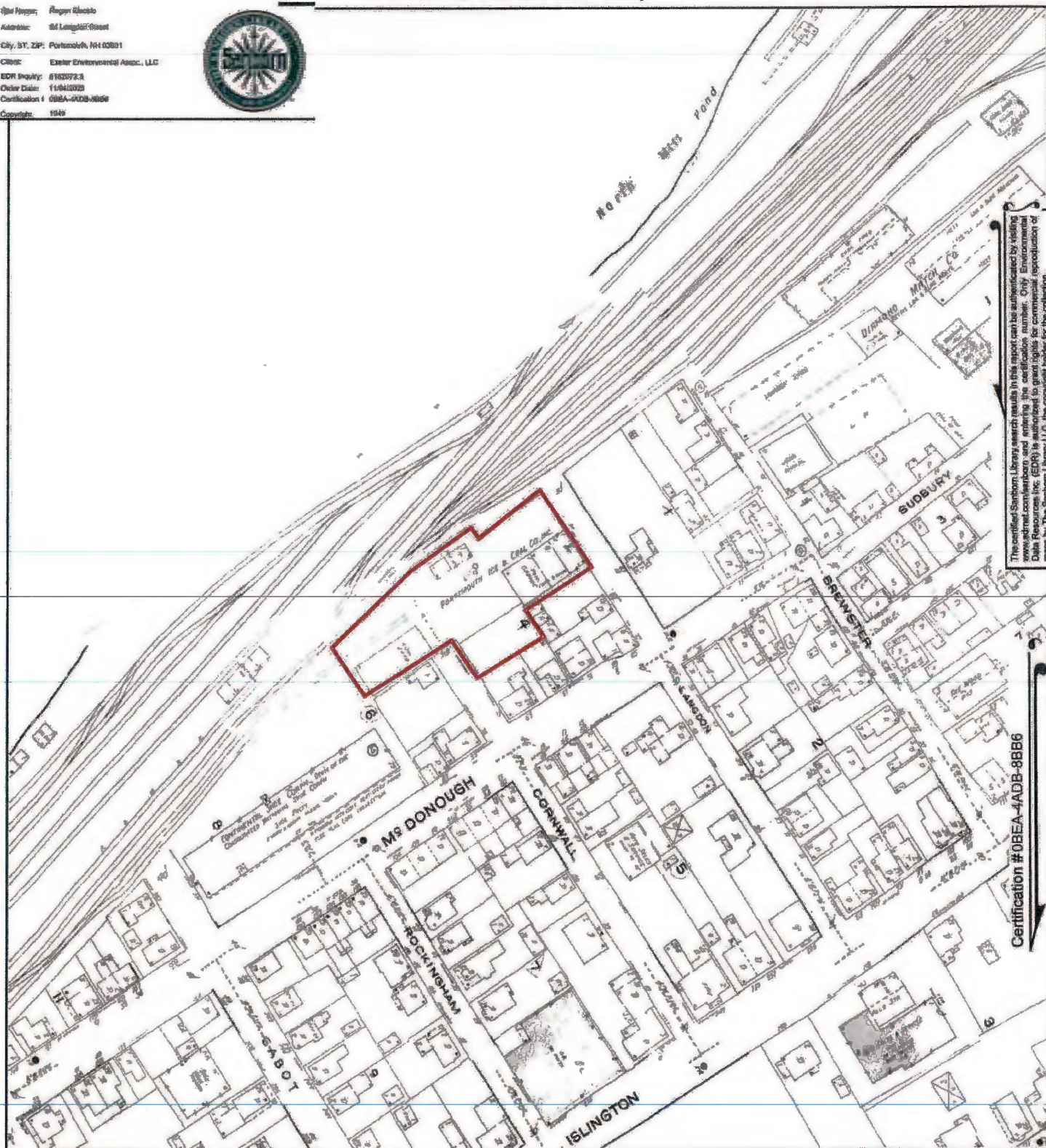




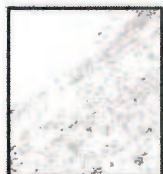
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1949

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City, ST, ZIP: Portsmouth, NH 03801
Client: Exeter Environmental Assoc., LLC
EDR Inquiry: 8162072.3
Order Date: 11/04/2023
Certification #: 08BA-4ADB-88B6
Copyright: 1949



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Volume 1, Sheet 5

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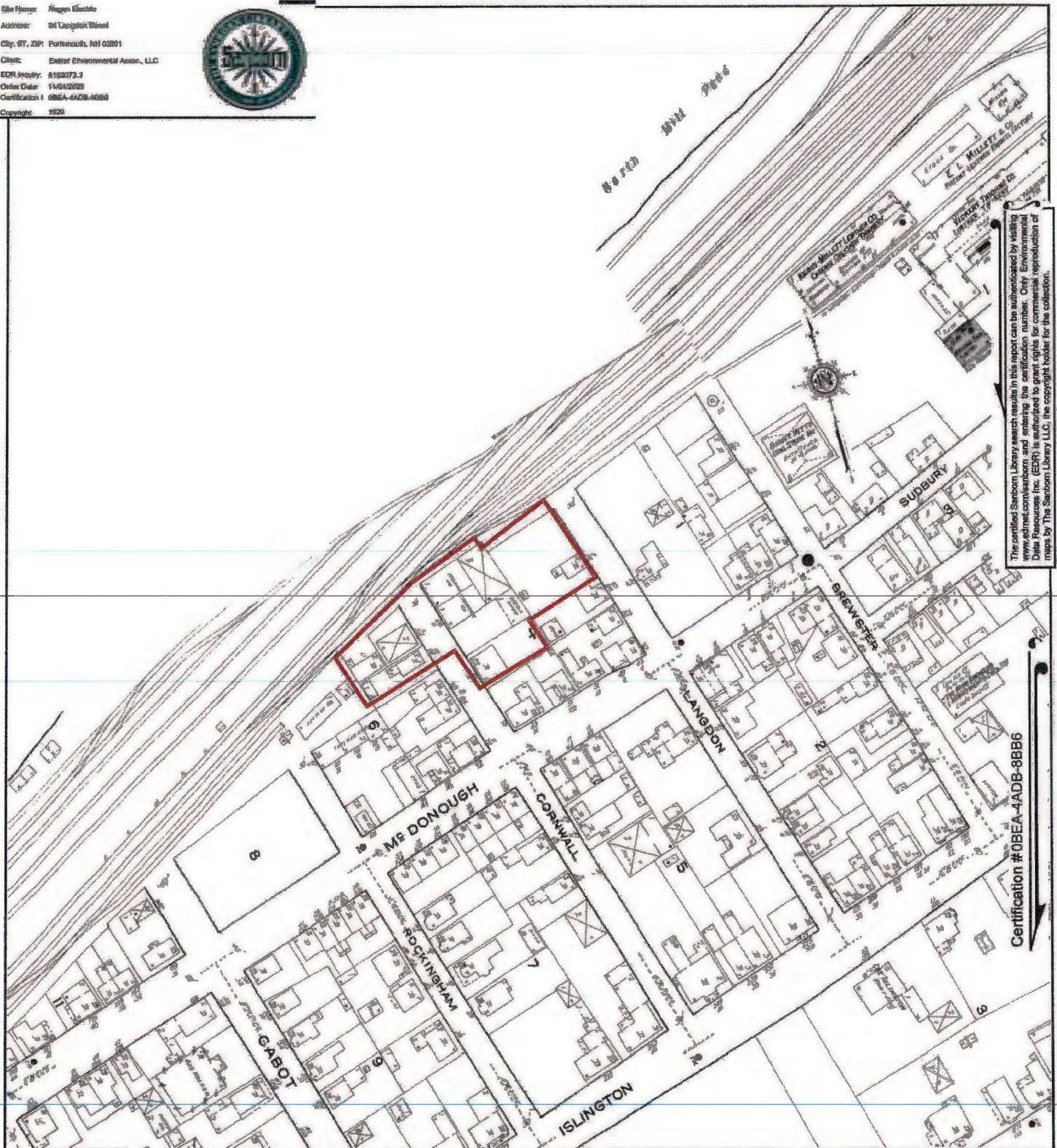
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1920

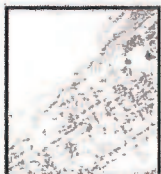
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EDR Inquiry: 8162072.3
Order Date: 11/01/2022
Certification: 08EA-4ADB-8BB6
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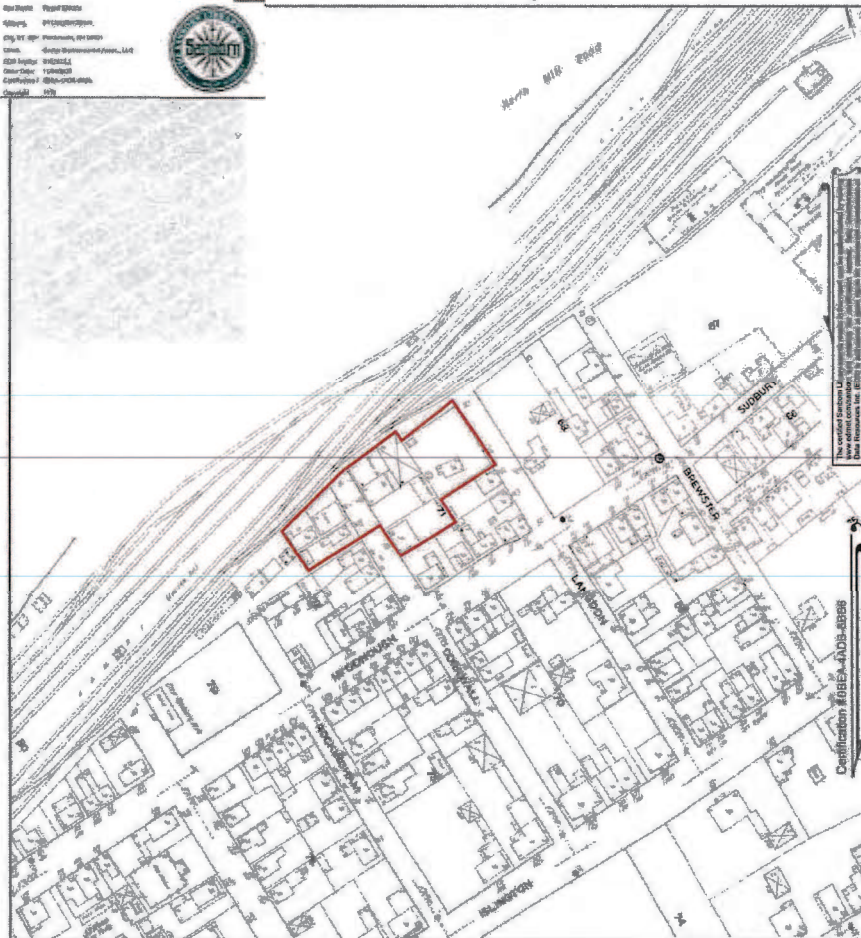


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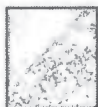


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1910



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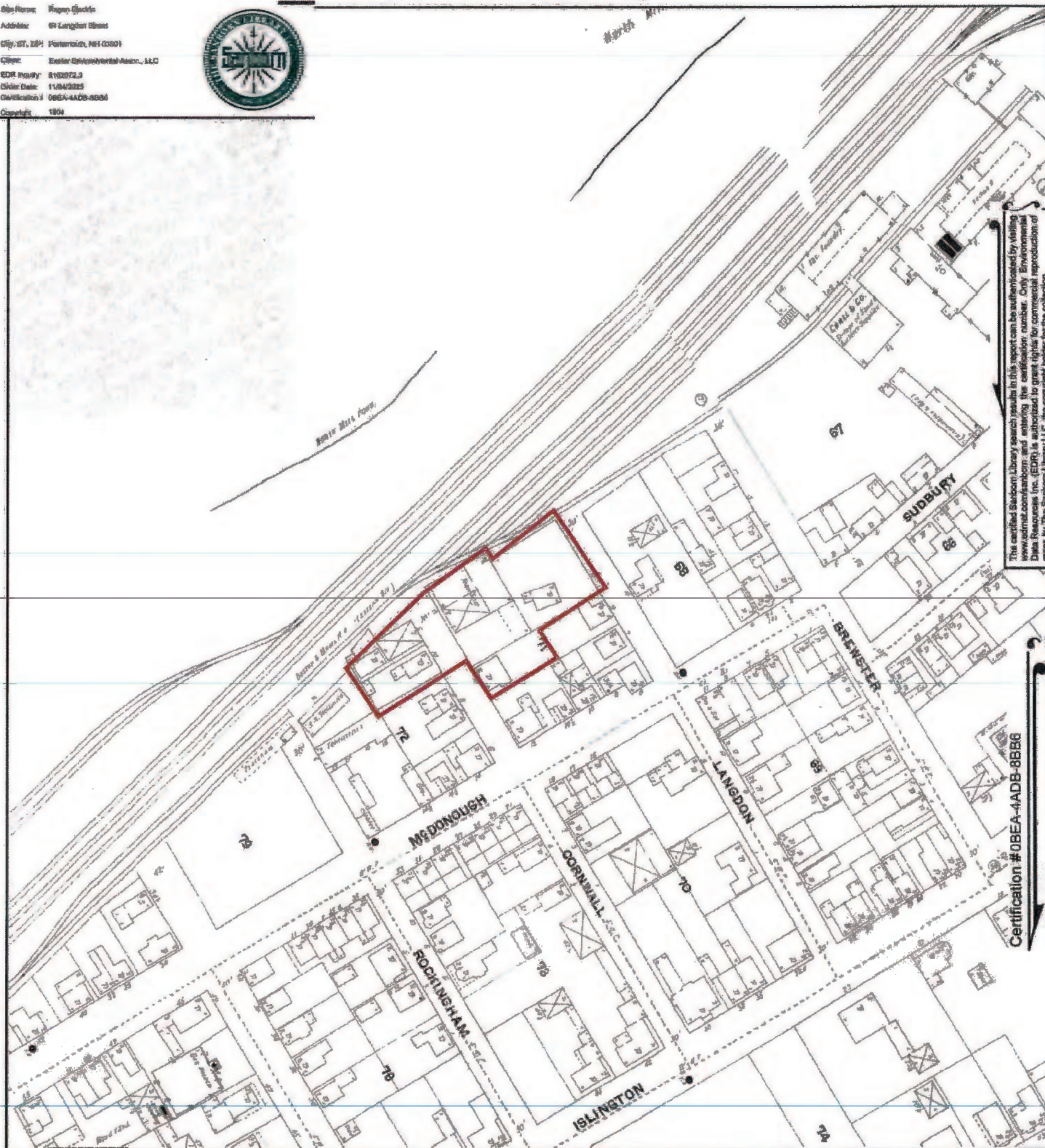
8162072 v 3 page 11



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1904

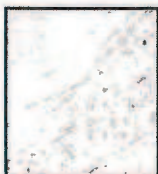
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Address: **64 Langdon Street**
City, ST, ZIP: **Portsmouth, NH 03801**
Client: **Eastco Environmental Assoc., LLC**
EDR Inquiry: **8162072.3**
Order Date: **11/04/2025**
Certification: **00EA-4ADB-8BB6**
Copyright: **1904**



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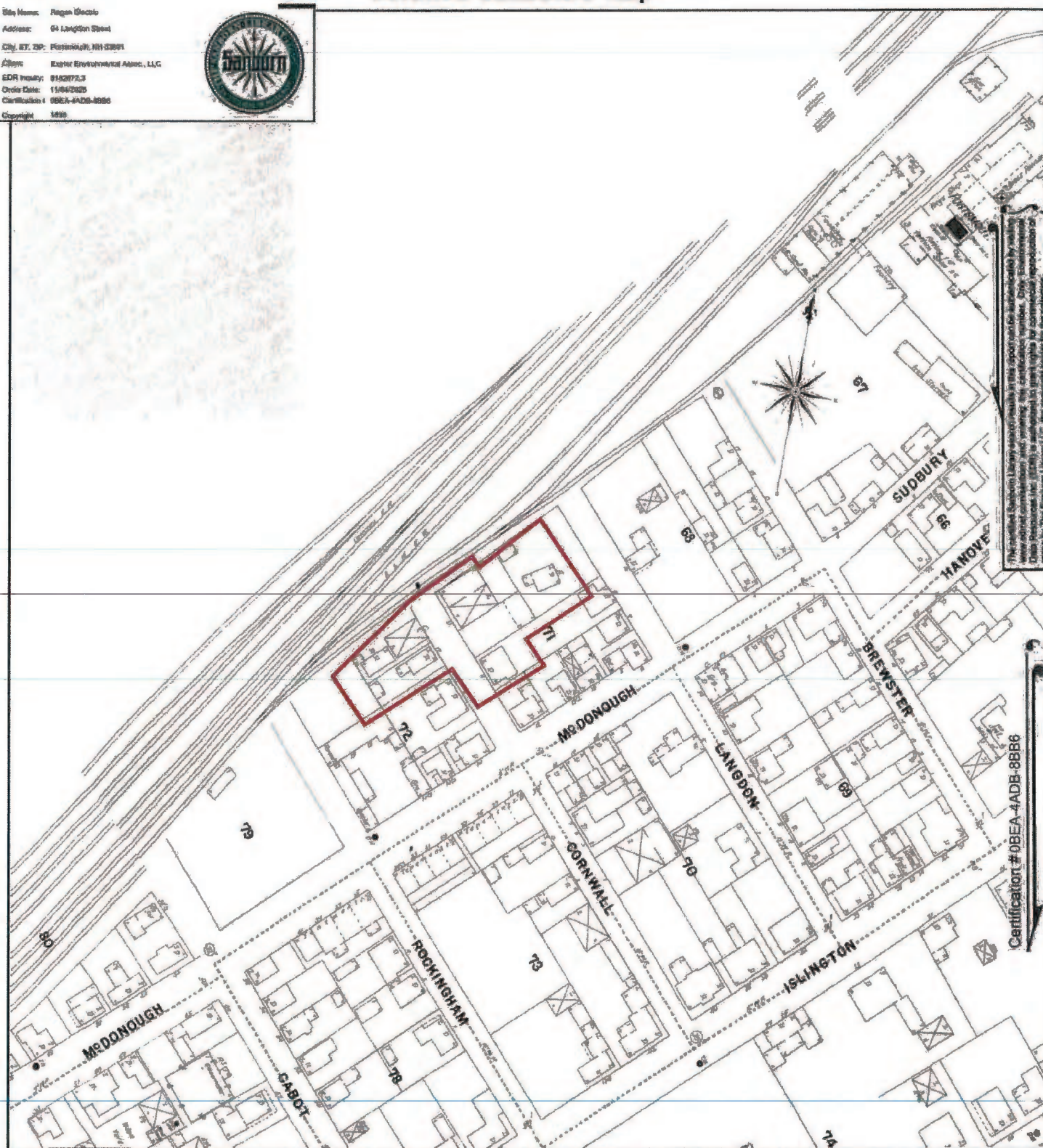
8162072 - 3 page 12



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1898

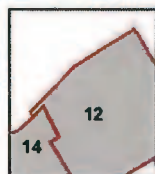
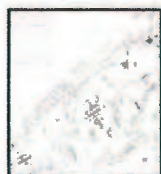
Site Name: Regan Electric
Address: 64 Langdon Street
City, ST, ZIP: Portsmouth, NH 03801
Client: Regan Environmental Assoc., LLC
EDR Inquiry: 8162072.3
Order Date: 11/04/2025
Certification: 08EA-4ADB-8B86
Copyright: 1898



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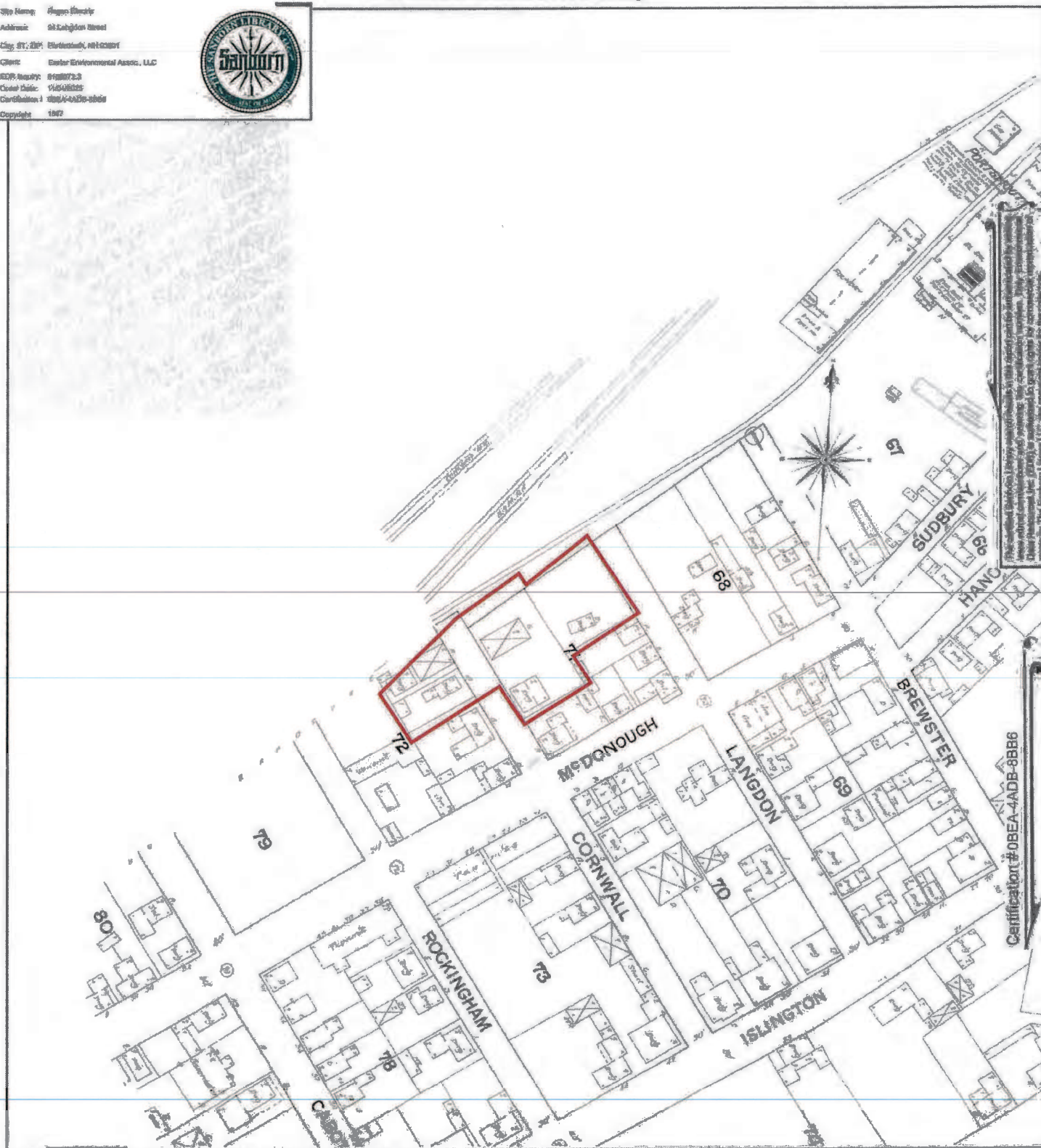


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City, ST, ZIP: Haverhill, NH 03041
Client: Eater Environmental Assoc., LLC
EDR Inquiry: 8162072-3
Order Date: 1/15/2013
Distribution: 00004-4AD8-8BB6
Copyright: 1987



Certified Sanborn® Map

1887



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Volume 1, Sheet 8

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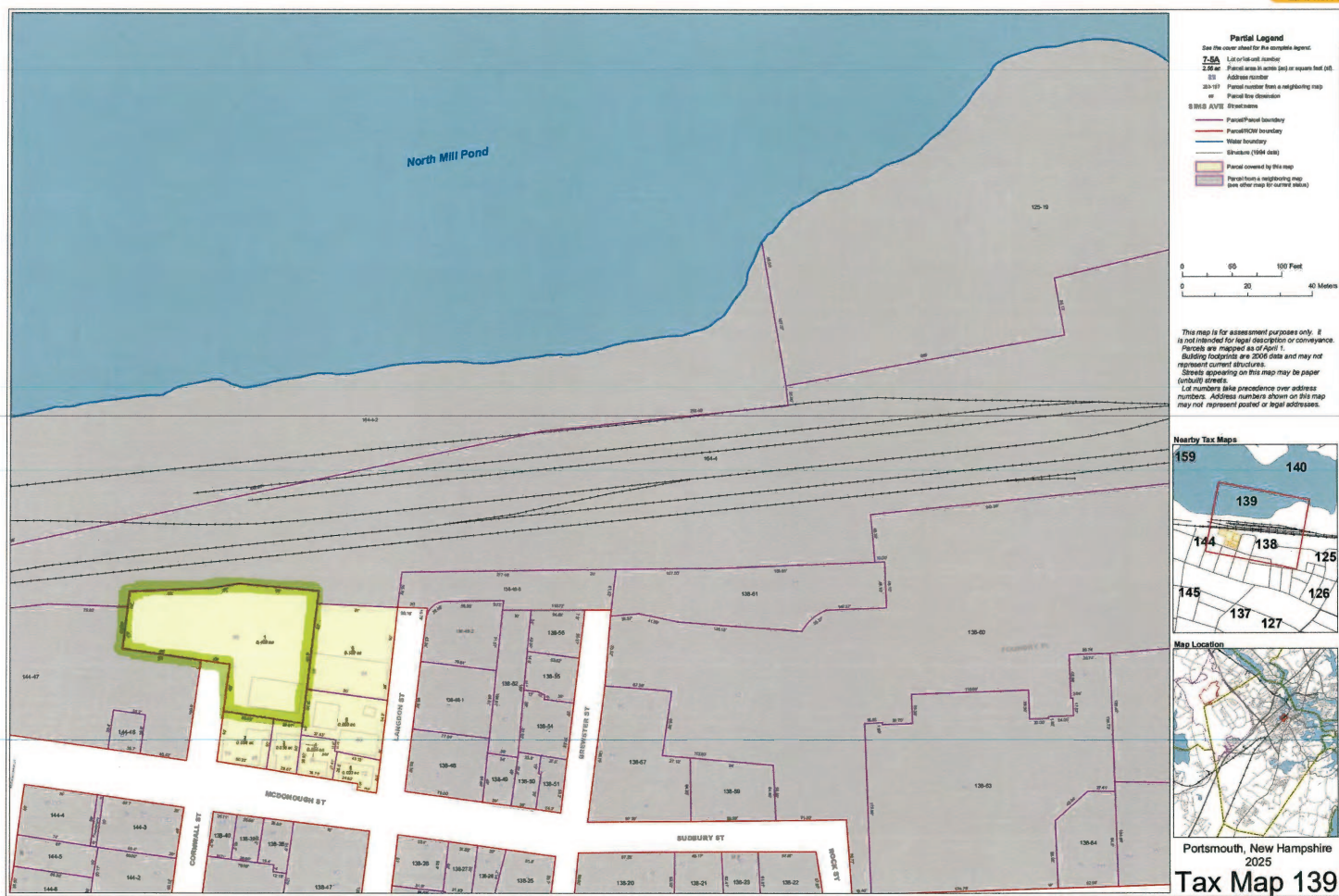


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Geometry updated 03/05/2025

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Geometry updated 03/06/2026

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Portsmouth, New Hampshire



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101 Langdon St
Portsmouth, New Hampshire



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Nov 2024

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98 Cornwall Street, Portsmouth, NH

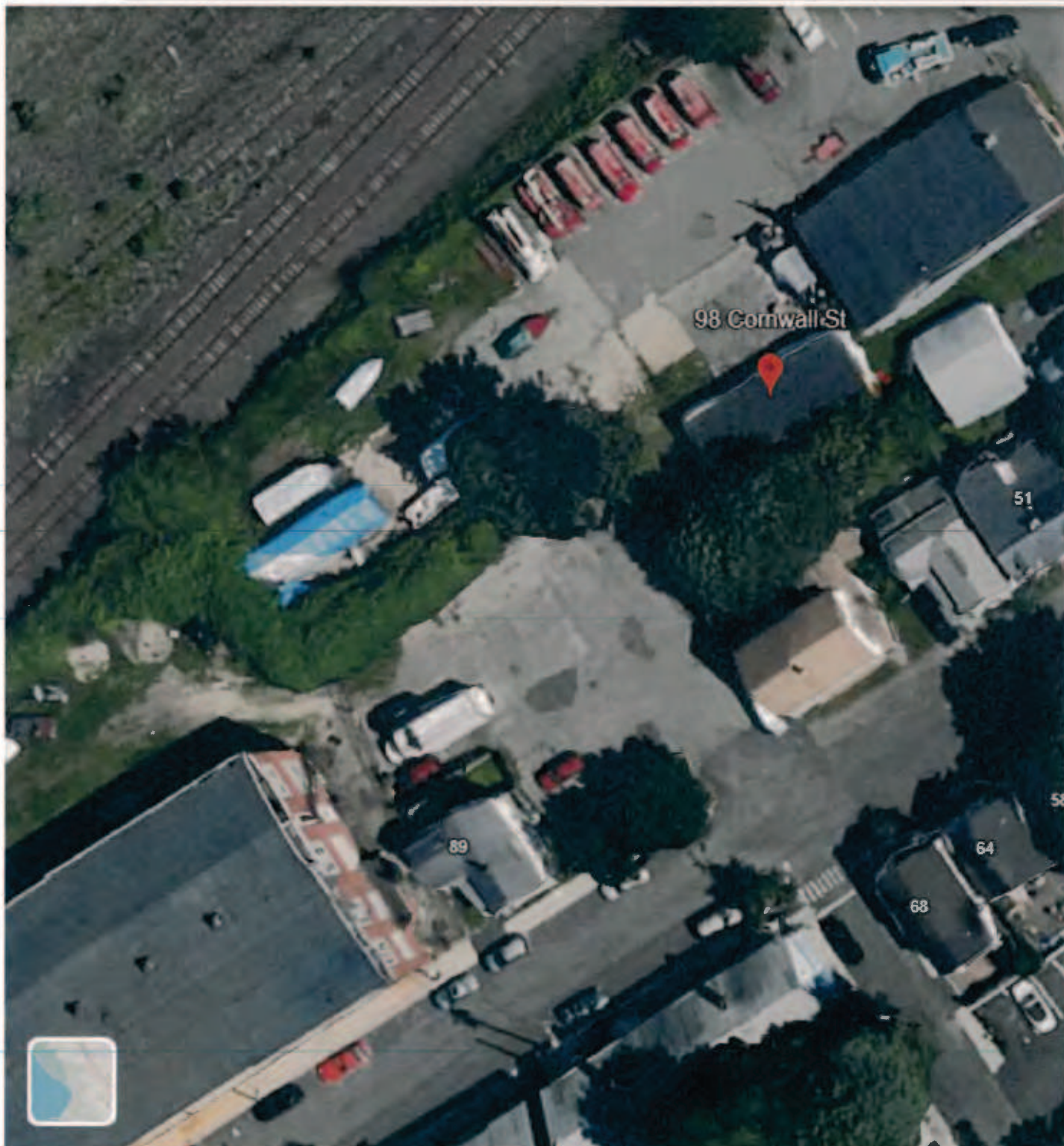


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98 Cornwall Street, Portsmouth, I



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NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 136 AS BEING A PORTION OF LOT 1.
- 2) OWNER OF RECORD: BEAN ELECTRIC COMPANY, INC.
13 LINDSEY STREET
PORTSMOUTH, NH 02801
1951/57 & 1366/1375
- 3) EXISTING DISCONTINUANCE AREA:
3.00 AC +/- (SEE ATTACHED)
- 4) THE PURPOSE OF THIS PLAN IS TO SHOW THE PORTION OF CORNWALL STREET TO BE RECONFIGURED BY THE CITY OF PORTSMOUTH AS PART OF AN ASSESSMENT MAP 136 IN THE CITY OF PORTSMOUTH.
- 5) ADJACENT INFORMATION TAKEN FROM THE CITY OF PORTSMOUTH ASSESSOR'S MAP 136.
- 6) ADJACENT READING LOCATIONS SHOWN HEREIN SHOULD BE CONSIDERED APPROXIMATE.
- 7) SEE MAP OF ADJACENT VARIANCE DATED 01/18/00 TO ALLOW CONTINUANCE OF A GARAGE.
- 8) PROPOSED LAYOUTS ARE IN 20' WIDE AND 10' ON EITHER SIDE OF THE EXISTING 40' WIDE LANE. THE 10' WIDE PORTION OF THE LANE WOULD BE CONSIDERED APPROXIMATE AND WILL BE DETERMINED IN THE FIELD DURING THE TIME OF CONSTRUCTION.

