



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of March 12, 2011

**DATE:** February 17, 2011

**SUBJECT:** Enactment of an Ordinance to Amend and Reenact an Ordinance to Vacate Portions of Two Five (5)-Foot-Wide Sanitary Sewer Easements Located Within a Parcel of Real Property Owned by CARS-DB1, LLC, Located at 2631 Shirlington Road (RPC# 31-034-041), to Extend the Ordinance Expiration Date, with Conditions.

**Original Applicant:** BMW of Arlington

**Property Owner/Extension Applicant:** CARS-DB1, L.L.C.

**By:**

Martin D. Walsh, Esquire

Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.

2200 Clarendon Blvd., Suite 1300

Arlington, VA 22201

Counsel for the Extension Applicant

**C. M. RECOMMENDATIONS:**

1. Enact the attached Ordinance to Amend and Reenact an Ordinance to Vacate Portions of Two Five (5)-Foot-Wide Sanitary Sewer Easements Located Within a Parcel of Real Property Owned by CARS-DB1, L.L.C., Located at 2631 Shirlington Road (RPC No. 31034041), with Conditions; and
2. Authorize the Real Estate Bureau Chief or his designee to execute, on behalf of the County Board, the Deed of Vacation and to accept all Deeds of Easements required by the Ordinance, subject to approval of such deeds as to form by the County Attorney.

**ISSUES:** The Applicant is requesting an extension, from May 17, 2011 to May 17, 2014, of the expiration date of a previously enacted Ordinance of Vacation. There are no issues identified in this request.

County Manager:

County Attorney:

13.

Staff: Michael Halewski, DES-Real Estate Bureau

**SUMMARY:** The Applicant is requesting that the County Board enact an Amended and Reenacted Ordinance of Vacation, attached to this report as Attachment 1, to extend the expiration date of the ordinance previously enacted by the County Board on May 17, 2008, with conditions. The portions of the two five-foot wide sanitary sewer easement areas proposed to be vacated by this Amended and Reenacted Ordinance of Vacation are identical to those in the 2008 Ordinance. The 2008 Ordinance provided that the Applicant has until noon on May 17, 2011, to complete all conditions of the Ordinance. However, given current market conditions, the Applicant has not begun construction of its proposed by-right development, and has requested an extension until May 17, 2014, to satisfy the ordinance conditions and implement the vacation of the easements. The proposed Amended and Reenacted Ordinance of Vacation will extend the ordinance expiration date to May 17, 2014.

**BACKGROUND:** The County Board enacted the 2008 Ordinance on May 17, 2008, to vacate portions of two five-foot wide sanitary sewer easements on portions of the subject site. The subject site is located at the south end of Nauck, west of Shirley Highway (I-395), north of the Four Mile Run stream, fronting on an extended segment of a public right-of-way lying to the southeast of Shirlington Road, having a physical address of 2631 Shirlington Road, and an Real Property Code number of 31034041. The subject site and easement areas to be vacated are more particularly shown on the plat attached to this report as Attachment 2, and on the Vicinity Maps attached hereto as Attachments 3, 4, and 5. The Property was formerly used as an automobile storage and service facility for Rosenthal Chevrolet. The Applicant plans to redevelop the site by-right as an automobile dealership and service center. The Applicant has requested the vacation of the following two easement areas:

- 1) a 1,480-square-foot portion of a five (5)-foot-wide sanitary sewer easement, depicted as, "Approximate Location, Exist. 5' San Sew Esm't (D.B. 381, PG. 70)(D.B. 407, PG. 348)(D.B. 407, PG. 358), Area = 1,480 S.F., Hereby Vacated," on a plat entitled "Plat Showing Vacation of Sanitary Sewer Easements, Deed Book 381 Page 70, Deed Book 407 Page 348, Deed Book 407 Page 358, Deed Book 1362 Page 138, Property of CARS-DB1, LLC, Deed Book 2946 Page 1537, Arlington County, Virginia," dated April 2, 2008, prepared by VIKA ("Plat"), said Plat being attached to this report as Exhibit "A"; and
- 2) a 1,878-square-foot portion of a five (5)-foot-wide sanitary sewer easement, depicted as, "Approximate Location, Ex. 5' San Sew Esm't (D.B. 1362, PG. 138), Item #2, Area = 1,878 S.F., Hereby Vacated," on the Plat.

There are currently County sanitary sewer lines located within the Easement Areas.

The County acquired the Easement Areas via four documents: 1) an Agreement dated June 19, 1935, and recorded in Deed Book 381 at Page 70, among the land records of Arlington County, Virginia (hereinafter, the "Land Records") on March 6, 1937; 2) an Agreement dated June 19, 1935, and recorded in Deed Book 407 at Page 348 among the Land Records, on March 6, 1937; 3) an Agreement dated June 19, 1935, and recorded in Deed Book 407 at Page 358 among the Land Records on March 6, 1937; and 4) a Deed of Easement dated March 17, 1959, and recorded in Deed Book 1362 at Page 138, among the Land Records on March 24, 1959.

Due to the current market conditions, the Applicant has not begun construction of its proposed by-right development, and has requested an extension until May 17, 2014, to satisfy the conditions of the ordinance and implement the vacation of the easements.

**DISCUSSION:** Upon enactment of the Amended Ordinance, the Applicant would be given an additional three years to satisfy the conditions of the vacation Ordinance. Except for the expiration date, all other conditions of the 2008 Ordinance are incorporated into, and made part of, the Amended Ordinance. With completion of the conditions specified in the Amended Ordinance and recordation of the Deed of Vacation by the Applicant before the expiration date, the County's interests in the vacated portions of the two five-foot wide sanitary sewer easements will be extinguished.

Legal and Physical Description: The easement areas that are the subject of this vacation request are shown and described on the Plat of this site attached to this report as Attachment 2. The subject site is located at the south end of Nauck, west of Shirley Highway (I-395), north of the Four Mile Run stream, fronting on an extended segment of a public right-of-way, lying to the southeast of Shirlington Road, having a physical address of 2631 Shirlington Road, and is identified by Arlington County Real Property Code Number 31034041.

Compensation: Staff recommends that no compensation be required from the Applicant for vacating the portions of the sanitary sewer easements proposed to be vacated within property. This follows the established practice of not requiring compensation for vacation of utilities easements when an easement is no longer necessary or, as in this case, will be relocated for a development at the Applicant's or developer's sole cost and expense.

Public Notice: Public notice of the proposed vacation was given in accordance with the Code of Virginia. Notices were placed in the February 15, 2011 and the March 1, 2011 issues of the Washington Times for the County Board Meeting of March 12, 2011.

**FISCAL IMPACT:** As noted above, staff recommends that no compensation be required from the Applicant for the requested vacations. This follows the established practice of not requiring compensation for vacation of utility easements when easements will be relocated at the Applicant's or developers sole cost and expense. Therefore, there is no fiscal impact.

## ATTACHMENT 1

### **AN ORDINANCE TO AMEND AND REENACT AN ORDINANCE OF VACATION TO VACATE PORTIONS OF TWO FIVE (5) FOOT WIDE SANITARY SEWER EASEMENTS LOCATED WITHIN A PARCEL OF REAL PROPERTY OWNED BY CARS-DB1, LLC, LOCATED AT 2631 SHIRLINGTON ROAD (RPC NO. 31034041), WITH CONDITIONS.**

BE IT ORDAINED that, pursuant to a request by CARS-DB1, L.L.C. (“Applicant”), owners of the real property known as 2631 Shirlington Road, RPC No. 31034041 (the “Property”), said request existing on file in the offices of the Department of Environmental Services, to vacate a 1,480-square-foot portion of a sanitary sewer easement, and a 1,878-square-foot portion of a second sanitary sewer easement (“Easements”), which portions of the Easements to be vacated are located within the Property, and were created by: 1) an Agreement dated June 19, 1935, and recorded in Deed Book 381 at Page 70, among the land records of Arlington County, Virginia (hereinafter, the “Land Records”) on March 6, 1937; 2) an Agreement dated June 19, 1935, and recorded in Deed Book 407 at Page 348 among the Land Records, on March 6, 1937; 3) an Agreement dated June 19, 1935, and recorded in Deed Book 407 at Page 358 among the Land Records on March 6, 1937; and 4) a Deed of Easement dated March 17, 1959, and recorded in Deed Book 1362 at Page 138, among the Land Records on March 24, 1959, as such vacated portions of the Easements are shown on a plat entitled, “Plat Showing Vacation of Sanitary Sewer Easements, Deed Book 381 Page 70, Deed Book 407 Page 348, Deed Book 407 Page 358, Deed Book 1362 Page 138, Property of CARS-DB1, LLC, Deed Book 2946 Page 1537, Arlington County, Virginia,” dated April 2, 2008, prepared by VIKA (“Plat”), said Plat being attached to the County Manager’s report dated February 15, 2011 as ATTACHMENT “2”, are hereby vacated, subject to the following conditions:

1. The Applicant shall prepare and submit to Arlington County (“County”) for review and approval, the Deed of Vacation and all required plats. These documents shall be subject to approval by the County Manager, or his designee, as to substance, and approval of the deeds, as to form, by the County Attorney.
2. The Applicant shall, at its own cost and expense, remove, relocate and reconstruct all existing public utilities located within the portion of the Easements herein vacated, with new utilities and related appurtenant facilities of sizes, dimensions and at locations acceptable to the Department of Environmental Services (“DES”), in strict accordance with Arlington County Construction Standards and Specifications, and all applicable laws, ordinances, regulations and policies. Such new utilities and related appurtenant facilities so removed, relocated and reconstructed by the Applicant shall be operational, and DES shall have indicated in writing that such facilities comply with all acceptance requirements, before the Deed of Vacation is executed on behalf of the County Board of Arlington County, Virginia.
3. The Applicant shall create, grant and convey to the County twenty (20)-foot-wide public utility easements necessary to accommodate all relocated facilities, as required by the County. The Real Estate Bureau Chief, Department of Environmental Services, or his designee, is authorized to accept all public utility easements on behalf of the County, subject to approval as

to form by the County Attorney. Any such public utility easements shall be recorded by the Applicant, at the Applicant's sole cost and expense, among the land records of the Clerk of the Circuit Court of Arlington County immediately before recording the Deed of Vacation.

4. The Applicant shall submit, for review and approval, to the DES, a utility relocation and engineering design plan ("Plan") for the construction, relocation, removal, replacement and/or abandonment of all public utilities located, in whole or in part, within the Easements vacated by this Ordinance of Vacation in compliance with the Arlington County Construction Standards and Specifications. The Plan may be made part of the civil site design engineering plans for the redevelopment of the Property, and shall be subject to approval by the Director of DES, or his designee.

5. The Applicant shall submit to the Director of DES, or his designee, a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or his designee, for the construction, relocation, removal, replacement or abandonment of all public utilities pursuant to the approved Plan.

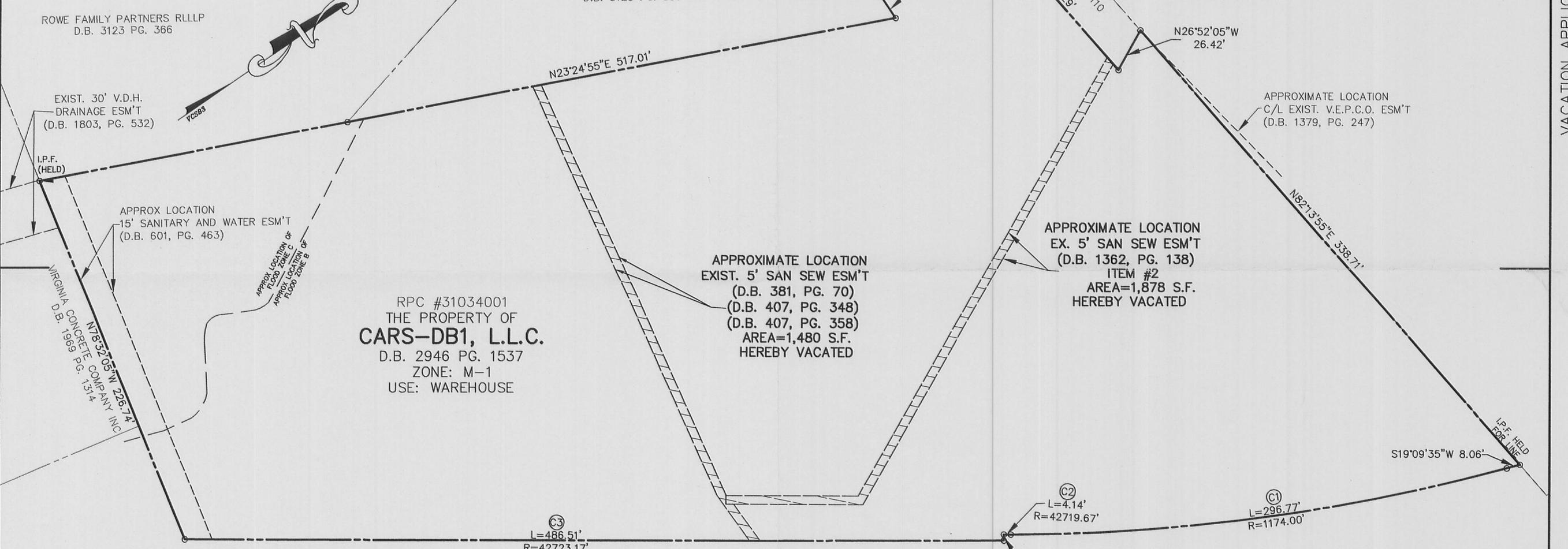
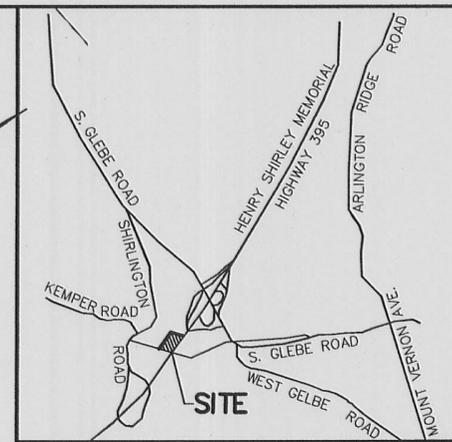
6. The Applicant shall record all plats, the Deed of Vacation, and all deeds of easement required by this Condition among the land records of the Clerk of the Circuit Court of Arlington County.

7. The Applicant shall pay all fees, including the fees for review, approval, and recordation of the required documents associated with the Ordinance of Vacation.

8. All conditions of the Ordinance of Vacation shall be met by noon on May 17, 2014, or this Ordinance of Vacation shall become null and void, without the necessity of any further action by the County Board.

**NOTES:**

- 1.) THE SUBJECT PROPERTY SHOWN HEREON IS IDENTIFIED ON ARLINGTON COUNTY TAX ASSESSMENT MAP 84-4 AS RPC# 31034001, AND IS ZONED M-1, PER PUBLIC RECORDS. CURRENT USE IS A WAREHOUSE.
- 2.) THE PROPERTY SHOWN HEREON IS CURRENTLY IN THE NAME OF: CARS DB1 LLC AS RECORDED IN DEED BOOK 2946 AT PAGE 1537 AMONG THE LAND RECORDS OF ARLINGTON COUNTY VIRGINIA.
- 3.) THE HORIZONTAL DATUM IS REFERENCED TO VIRGINIA STATE PLANE NAD '27 BY USING THE FOLLOWING TWO (2) W.M.A.T.A. CONTROL MONUMENTS:  
 MONUMENT 24 N=6994,429.9408 E=11,886,326.2878 EL=79.20'  
 MONUMENT 25 N=6,994,008.7611 E=11,886,412.5819 EL=58.80'
- 4.) THIS PROPERTY IS SUBJECT TO CONTROL OF SITE PLAN #\_\_\_ APPROVED BY THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA ON \_\_\_/\_\_\_/\_\_\_ AND APPROVAL OF THIS PLAT NEITHER ENLARGES NOR REDUCES THE OBLIGATIONS IMPOSED BY THIS SITE PLAN AS THEY RELATE TO THIS PROPERTY. THE SITE PLAN IS ON FILE IN THE OFFICE OF THE ZONING ADMINISTRATOR OF ARLINGTON COUNTY, VIRGINIA.
- 5.) TITLE REPORT NOTE: TITLE ABSTRACT FURNISHED BY DAVIS TITLE SERVICES, CASE NO. BK & K, JCK-CARS-DB1 WITH AN EFFECTIVE DATE OF 6-24-05, HAS BEEN INCORPORATED INTO THIS SURVEY.
- 6.) THE PROPERTY DELINEATED ON THIS PLAT IS SUBJECT TO THE ENACTMENT OF AN ORDINANCE TO VACATE A 5' WIDE SANITARY SEWER EASEMENT ACROSS A PORTION OF THE PROPERTY OF CARS-DB1, L.L.C., RPC #31034001, WITH CONDITIONS, ENACTED BY THE COUNTY BOARD ON \_\_\_/\_\_\_/\_\_\_.



RPC #31034001  
 THE PROPERTY OF  
**CARS-DB1, L.L.C.**  
 D.B. 2946 PG. 1537  
 ZONE: M-1  
 USE: WAREHOUSE

APPROXIMATE LOCATION  
 EXIST. 5' SAN SEW ESM'T  
 (D.B. 381, PG. 70)  
 (D.B. 407, PG. 348)  
 (D.B. 407, PG. 358)  
 AREA=1,480 S.F.  
 HEREBY VACATED

APPROXIMATE LOCATION  
 EX. 5' SAN SEW ESM'T  
 (D.B. 1362, PG. 138)  
 ITEM #2  
 AREA=1,878 S.F.  
 HEREBY VACATED

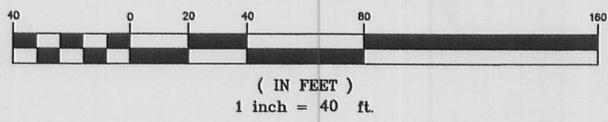
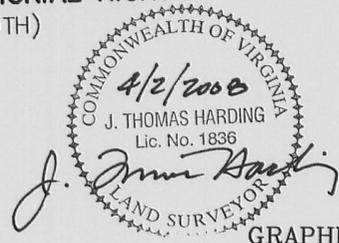
CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	DELTA	CHD BRG	CHORD
C1	296.77'	1174.00'	149.18'	14°29'00"	S26°24'05"W	295.98'
C2	4.14'	42719.67'	2.07'	0°00'20"	S33°38'45"W	4.14'
C3	486.51'	42723.17'	243.26'	0°39'09"	S33°58'29"W	486.51'

**ARLINGTON COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES**  
 DIVISION OF TRANSPORTATION

RECOMMENDED FOR APPROVAL: \_\_\_\_\_ APPROVED: \_\_\_\_\_

PLAT EXAMINER \_\_\_\_\_ SUBDIVISION AND BONDS ADMINISTRATOR \_\_\_\_\_

**INTERSTATE 395**  
**HENRY G. SHIRLEY MEMORIAL HIGHWAY**  
 (VARIABLE WIDTH)



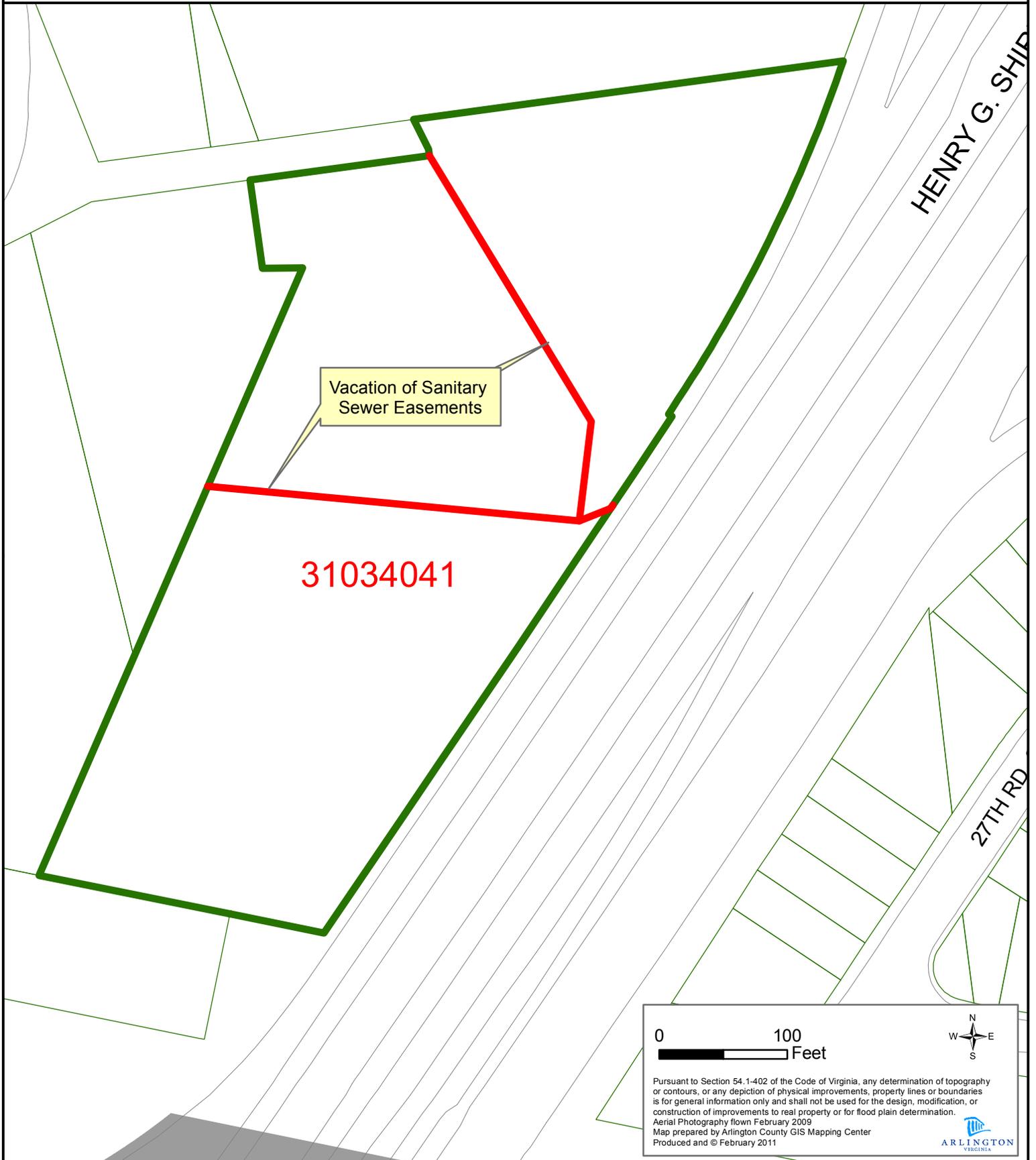
**PLAT SHOWING VACATION OF SANITARY SEWER EASEMENTS**  
 DEED BOOK 381 PAGE 70  
 DEED BOOK 407 PAGE 348  
 DEED BOOK 407 PAGE 358  
 DEED BOOK 1362 PAGE 138  
 PROPERTY OF  
**CARS-DB1, LLC**  
 DEED BOOK 2946 PAGE 1537  
**ARLINGTON COUNTY, VIRGINIA**  
 SCALE: 1"=40' DATE: APRIL 02, 2008

**VKA**  
 ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ G.P.S. SERVICES  
 VKA INCORPORATED  
 8180 GREENSBORO DRIVE SUITE 200 ■ MCGLENN, VIRGINIA 22102  
 (703)442-7800 ■ FAX (703)761-2787  
 MCGLENN, VA GERMANTOWN, MD  
 SHEET 1 OF 1

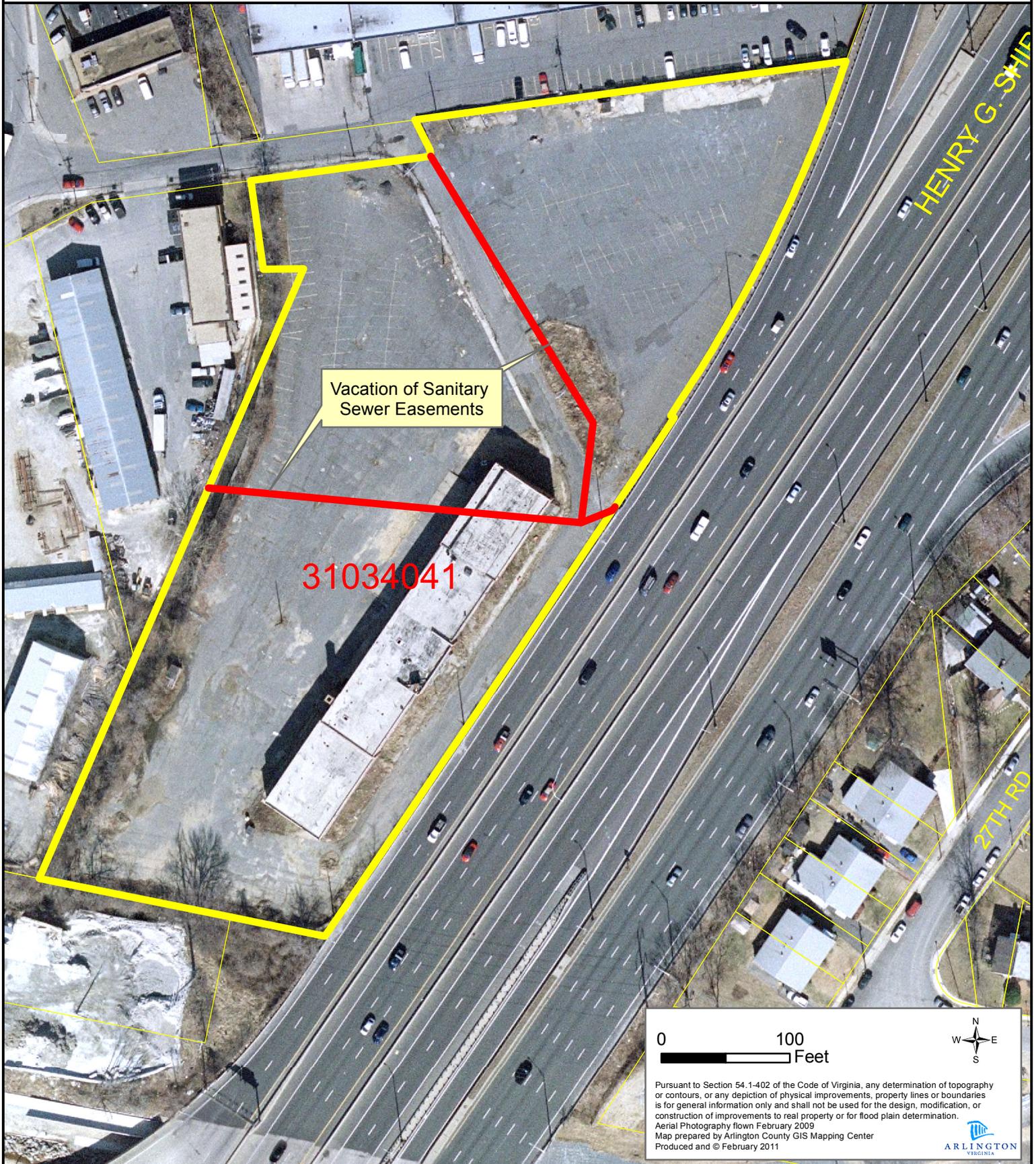
VACATION APPLICATION EXHIBIT

P:\SURVEYS\DD3-PROJECTS\6950-RP\DWG\6960600.DWG

Vicinity Map  
Extension of Expiration of Ordinance of Vacation  
2631 Shirlington RD  
RPC# 31034041



Vicinity Map  
Extension of Expiration of Ordinance of Vacation  
2631 Shirlington RD  
RPC# 31034041



Vacation of Sanitary Sewer Easements

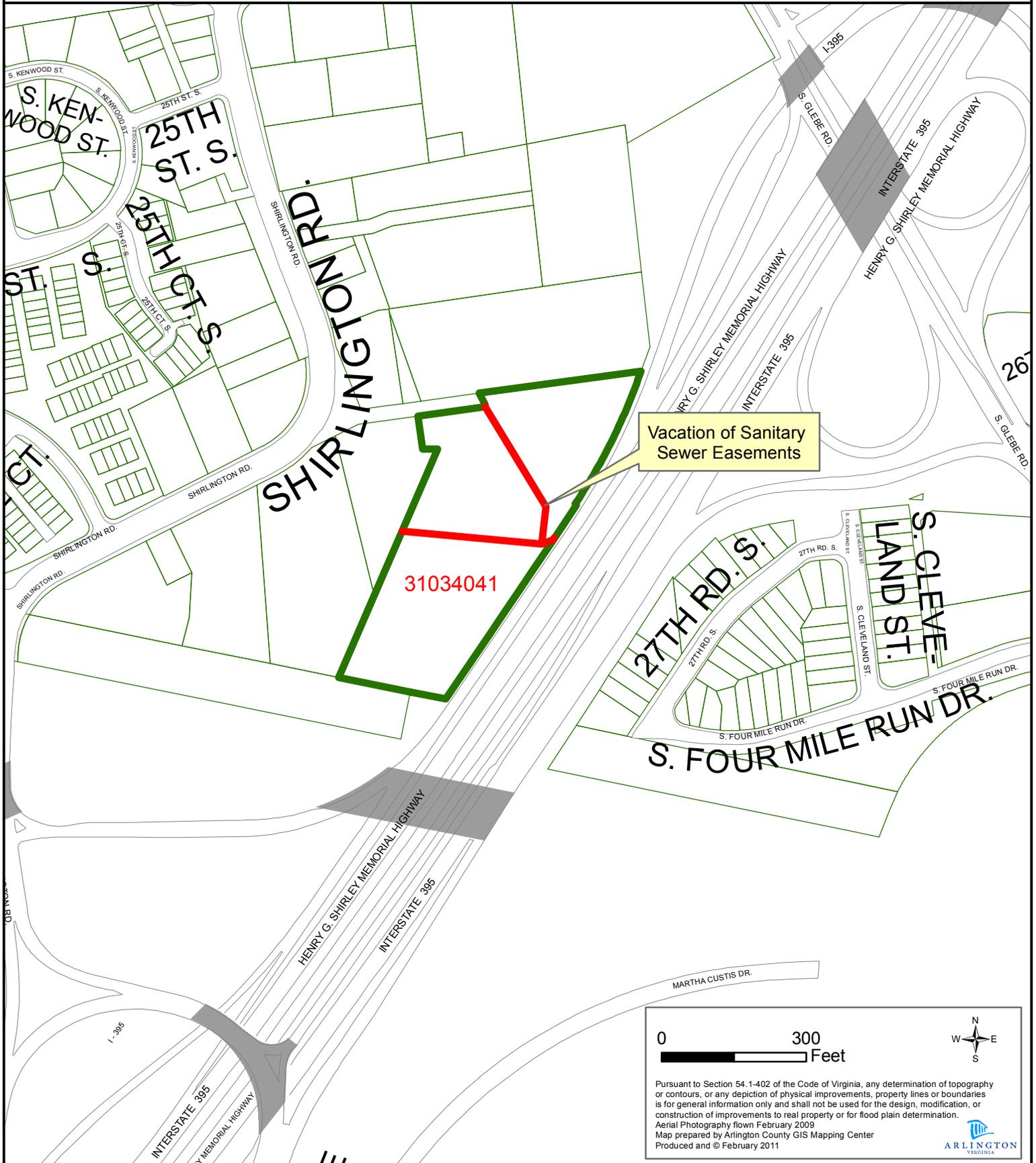
31034041



Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.  
Aerial Photography flown February 2009  
Map prepared by Arlington County GIS Mapping Center  
Produced and © February 2011



Vicinity Map  
Extension of Expiration of Ordinance of Vacation  
2631 Shirlington RD  
RPC# 31034041



Vacation of Sanitary Sewer Easements

31034041

0 300 Feet



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