



## STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: February 18, 2015

**PLANNER:** Adam Atamian, Associate Planner

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**SUBJECT:** Conditional Use Permit 15-014, Poche Burger and Kitchen Full Alcohol, a request to consider the sale of a full range of alcohol for indoor and outdoor on-site consumption at a restaurant located at 2727 Via Cascadita, Suite I, within the Neighborhood Commercial (NC1.1) zoning district.

### REQUIRED FINDINGS

Prior to approval of the proposed project, the following findings shall be made. The draft Resolution (Attachment 1) and analysis section of this report provide an assessment of the project's compliance with these findings.

#### ***Conditional Use Permit, Section 17.16.060***

- a. The proposed use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all the applicable provisions of this title, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed.
- b. The site is suitable for the type and intensity of use that is proposed.
- c. The proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity.
- d. The proposed use will not negatively impact surrounding land uses.

### BACKGROUND

Poche Burger and Kitchen is a casual dining restaurant that began operating in August, 2014. The restaurant owner and applicant, Hooman Mofidi, took over the commercial suite previously occupied by Corky's Family restaurant, which did not have any alcohol service. The project is located in the DMV shopping center on the corner of Avenida Vaquero and Via Cascadita.

On September 22, 2014, the applicant applied for a Minor Conditional Use Permit (MCUP) to allow the sale of beer and wine for indoor and outdoor on-site consumption at the restaurant. The applicant submitted the request for beer and wine only. He did this because he understood that his chances of receiving a type 47 license from the California Department of Alcoholic Beverage Control (ABC), which is required to sell a full range of alcoholic beverages, were very slight due to that agency's lottery-type system of permitting. However, soon after the MCUP request was approved by the Zoning Administrator on January 7, 2015,

the ABC informed the applicant that he was eligible to receive a type 47 license to sell a full range of alcoholic beverages. On January 8, 2015, the applicant applied for a Conditional Use Permit (CUP) to allow the indoor and outdoor on-site sale and consumption of a full range of alcoholic beverages.

### ***Development Management Team Meeting***

The City's Development Management Team (DMT) reviewed the project and supports the request, subject to the proposed conditions of approval.

Staff contacted the Orange County Sheriff Department (OCSD) and Code Enforcement Division to discuss the application. The project site and current restaurant had no history of violations associated with alcohol. Both the OCSD and Code Enforcement Divisions have stated they have no concerns related to the proposed project, subject to the proposed conditions of approval.

### ***Noticing***

Public notification was completed in accordance with State Law and Municipal Code regulations.

## **PROJECT DESCRIPTION**

Poche Burger and Kitchen proposes the indoor and outdoor service of a full range of alcoholic beverages during their operating hours of 8:00 a.m. to 10:00 p.m., seven days a week. There is no live entertainment associated with this request.

The alcohol service will be limited to dining tables and a small bar area proposed in the restaurant. The outdoor dining area will be enclosed with a patio fence to ensure that the consumption of alcohol remains in the approved area. The design of the fence was approved with a staff waiver of a Minor Architectural Permit to ensure that it is consistent with City's Design Guidelines.

## **PROJECT ANALYSIS**

### ***Conditional Use Permit***

The primary issue in the consideration of a Conditional Use Permit with the sale of a full range of alcohol for on-site consumption is compatibility with surrounding land uses. The restaurant is within an existing shopping center, referred to as the DMV shopping center, with various restaurants and retail businesses. The tenant suite is buffered from the nearest adjacent residential area, a mobile home park, by a 15 foot-wide landscaped buffer behind the subject building, a six foot perimeter fence, and an RV storage area located south of the subject property. The closest residence in the mobile home park is approximately 100 feet away. The site is suitable for the type and intensity of the use proposed, in that the sale and

consumption of alcoholic beverages is contained entirely within the building and the fenced outdoor dining area. Additionally, there is no anticipated increase to the intensity of the use as the alcoholic beverages will be provided to the restaurant's customers as part of their meals. There are no modifications being proposed to the total number of seats of the existing restaurant. The proposed bar seating will replace some of the dining table seating that currently exists. Additionally, the applicant anticipates that the seating at the bar will still include food service.

The proposed hours of operation are consistent with other casual dining restaurants in the City that do not serve alcohol. Many restaurants that do serve alcohol have longer hours of operation than the applicant's proposed closing time of 10:00 p.m., especially on weekend nights. Due to the walking distance of nearby neighborhoods, an earlier closing time would be more appropriate than those hours of operation permitted for restaurants in more intense commercial and mixed-use zones in the City.

Currently, the restaurant has approval for an indoor occupancy of 49, as well as the 18 outdoor seats on the existing patio. The restaurant meets all parking requirements, and no modifications are proposed. The proposed use will not be detrimental to the public health, safety or welfare, in that the use is ancillary to the primary restaurant establishment, and the project has been conditioned to ensure that the project complies with all applicable codes, and incorporates best management practices (See conditions of approval numbers 9, 10, and 11).

Per the ABC, approval of this application will result in an over concentration of on-site sale and consumption licenses for this census tract. This will be the second permit approved for the census tract area, with one other license located at Nobu Sushi restaurant, located at 415 Avenida Pico, Suite C, in the Pico Pavillion shopping center.

Due to the over concentration, the ABC requires the City to make a finding of Public Convenience and Necessity. Staff supports the Public Convenience and Necessity finding given that this is the second license in this particular census tract area, it is the only restaurant in the Shorecliff's area that would serve alcohol, and the other license is approximately two miles away near the intersection of the I-5 freeway and Avenida Pico.

### **GENERAL PLAN CONSISTENCY**

Table 3 summarizes how the proposed use is consistent with adopted policies outlined in the City of San Clemente General Plan.

**Table 3 - General Plan Consistency**

Goals and Policies	Consistency Finding
<p>LU Goal 8) provide a diversity of land use areas that complement one another and are characterized by differing functional activities and intensities of use;</p>	<p>Consistent. The project provides a full service dining experience that complements surrounding land uses.</p>
<p>LU-2.03. <i>Neighborhood Compatibility.</i> We require that commercial projects abutting residential neighborhoods be designed and operated to protect residents from the effects of noise, light, odors, vibration traffic, parking and other operational impacts.</p>	<p>Consistent. The project is conditioned to maintain neighborhood compatibility and no adverse impacts are anticipated.</p>

**ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):**

In accordance with the California Environmental Quality Act (CEQA) it was determined that the project is categorically exempt from CEQA as a Class 1 exemption pursuant to CEQA Guidelines Section 15301, because the project consists of licensing associated with an existing facility.

**ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES**

1. The Planning Commission can concur with staff and approve CUP 15-014.

*This action would result in allowing the applicant to expand the sale of a full range of alcohol in association with the new restaurant.*

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed project or conditions.

*This action would result in any modifications being incorporated accordingly, an example of this could include hours of operation.*

3. The Planning Commission can deny CUP 15-014.

*This action would result in the applicant being denied to sell a full range of alcohol, but would be able to sell beer and wine on-site. The applicant may appeal the decision to the City Council.*

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission approves CUP 15-014, Poche Burger and Kitchen Full Alcohol, subject to the attached Resolution and Conditions of Approval.

**Attachments:**

1. Resolution No. PC 15-005  
Exhibit 1 - Conditions of Approval
2. Location Map  
Plans

# ATTACHMENT 1

## RESOLUTION NO. PC 15-005

### A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 15-014, POCHE BURGER AND KITCHEN FULL ALCOHOL, TO ALLOW THE SALE OF A FULL RANGE OF ALCOHOL FOR INDOOR AND OUTDOOR ON-SITE CONSUMPTION AT AN EXISTING RESTAURANT LOCATED AT 2727 VIA CASCADITA, SUITE I

**WHEREAS**, on January 8, 2015, a complete application was submitted by Hooman Mofidi, 16 Calle La Espalda, San Clemente, CA 92673, a request for the on-site sale and indoor and outdoor consumption of a full range of alcoholic beverages at a bona fide restaurant located at 2727 Via Cascadita, Suite I, the legal description being Lot 6, of Tract 4577; APN 691-303-04; and

**WHEREAS**, the Planning Division completed an initial environmental assessment of the above matter in accordance with the California Environmental Quality Act (CEQA) and recommends that the Planning Commission determine this project is a Class 1 categorical exemption pursuant to CEQA Guidelines Section 15301 because the project involves licensing associated with an existing facility; and

**WHEREAS**, on December 4, 2014, the City's Development Management Team reviewed the proposal to sell alcoholic beverages for on-site consumption for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

**WHEREAS**, on February 18, 2015, the Planning Commission held a duly noticed public hearing on the subject application and considered evidence presented by the City staff, the applicant, and other interested parties.

**NOW THEREFORE**, the Planning Commission of the City of San Clemente hereby resolves as follows:

**Section 1:** This project is categorically exempt from CEQA as a Class 1 exemption pursuant to CEQA Guidelines Section 15301 because the project involves licensing associated with an existing facility.

**Section 2:** The proposed on-site sale and indoor and outdoor consumption of a full range of alcoholic beverages at a restaurant is permitted within Neighborhood Commercial (NC 1.1) zoning district pursuant to the approval of a Conditional Use Permit (CUP) and complies with all the applicable provisions of the Municipal Code, the San Clemente General Plan and the purpose and intent of the zone in which the use is being proposed in that the on-site sale and consumption of alcoholic beverages is consistent with the uses of the adjacent properties.

**Section 3:** The site is suitable for the type and intensity of the on-site sale of a full range of alcoholic beverages, in that the alcoholic beverage will be purchased and

consumed on-site in conjunction with the restaurant in areas contained entirely within the building and the fenced outdoor dining area. The site is suitable in that the restaurant meets the requirements of the Zoning Ordinance. No existing problems were identified with the established operations and the Alcoholic Beverage Control Board and the Orange County Sherriff's Department. The City's Code Enforcement division has no outstanding issues with the restaurant.

**Section 4:** The proposed use will not be detrimental to the public health, safety or welfare or materially injurious to properties and improvements in the vicinity, in that the development must comply with all code requirements including but not limited to Fire Code, California Building Code, Alcoholic Beverage Control, and the San Clemente Municipal Code. Additionally, the proposed use is ancillary to the primary restaurant establishment, and the project has been conditioned to ensure that the project complies with all applicable codes, and incorporates best management practices.

**Section 5:** The proposed use will not negatively impact surrounding land uses in that the sale and consumption of a full range of alcoholic beverages has been conditioned to restrict the hours of operation of the service of alcoholic beverages to occur between the restaurant's normal hours of operation of 8:00 a.m. and 10:00 p.m. to maintain compatibility with the surrounding properties and must comply with the City's Noise Ordinance.

**Section 6:** The Planning Commission of the City of San Clemente hereby approves Conditional Use Permit 15-014, Poche Burger and Kitchen Full Alcohol, to allow the sale of a full range of alcoholic beverages for in-door and outdoor on-site consumption at an existing restaurant, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit 1.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of San Clemente on February 18, 2015.

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Chair

**TO WIT:**

**I HEREBY CERTIFY** that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on February 18, 2015, and carried by the following roll call vote:

**AYES:            COMMISSIONERS:**  
**NOES:            COMMISSIONERS:**  
**ABSTAIN:        COMMISSIONERS:**  
**ABSENT:         COMMISSIONERS:**

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Secretary of the Planning Commission



**CONDITIONS OF APPROVAL \*  
CONDITIONAL USE PERMIT 15-014  
POCHE BURGER AND KITCHEN FULL ALCOHOL**

1. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. *[Citation – City Attorney Legal Directive]* (PInG.)\_\_\_\_\_
  
2. Thirty days after project approval, the owner or designee shall submit written consent to all of these imposed conditions to the Community Development Director or designee. The owner or designee understands that the resolution will be of no force or effect unless such written consent is submitted to the City. *[Citation – City Attorney Legal Directive]* (PInG.)\_\_\_\_\_

3. The sale of alcoholic beverages for on-site consumption shall be limited to indoor public seating area and the outdoor fenced patio area only, and between regular operating hours of 8:00 a.m. and 10:00 p.m. daily. Any proposed change in the hours of operation shall require an amendment to Conditional Use Permit (CUP) 15-014. *[Citation – Division 9 (Alcoholic Beverages), Section 25631 to 25633 of Business & Professions Code, State of California]* (PIng.)\_\_\_\_\_
4. The owner or designee shall obey all rules, regulations and conditions imposed upon the project through, but not limited to, the California Department of Alcoholic Beverage Control (ABC) and relevant State laws. Revocation of, or sale of said ABC license to another person at another location, shall render any City approved CUP for alcohol service at the subject property null and void. Prior to any sale of the ABC license, the owner or designee shall notify the Community Development Department of the sale. *[Citation – Division 9 (Alcoholic Beverages), Business and Professions Code, State of California]* (PIng.)\_\_\_\_\_
5. The owner or designee shall be responsible for ensuring that all employees receive 'Responsible Alcoholic Beverage Service' training as offered through programs established by the Orange County Health Care Agency and Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. *[Citation - Section 17.16.070.K of the of the SCMC]* (PIng.)\_\_\_\_\_
6. CUP 15-014 shall become null and void if the use is not commenced within one (1) year from the date of the approval thereof. Since the use does not require the issuance of a building permit, the use shall not be deemed to have commenced until the date the use becomes operational. *[Citation - Section 17.12.150.A.1 of the SCMC]* (PIng.)\_\_\_\_\_
7. The owner or designee shall have the right to request an extension of CUP 15-014 if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval in compliance with section 17.12.160 of the Zoning Ordinance. *[Citation - Section 17.12.160 of the SCMC]* (PIng.)\_\_\_\_\_
8. Pursuant to Section 17.12.150(C) of the Zoning Ordinance, the on-site sale and indoor and outdoor consumption of alcoholic beverages use shall be deemed to have lapsed, and CUP 15-014 shall be deemed to have expired, ninety (90) days after the date the on-site sale and indoor and outdoor consumption of alcoholic beverages ceases operation and/or the business closes at such location. *[Citation - Section 17.12.150(C) of the SCMC]* (PIng.)\_\_\_\_\_

- 9. In the event that noise impacts neighboring properties, the tenant must soundproof the facility, or use other best management practices as determined by the City Planner, to eliminate the problem and comply with the City's noise ordinances. ■■ (PIng.) \_\_\_\_\_
  
- 10. The business owner shall use her/his best judgment and best management practices to ensure activities on the premises will be conducted in a manner that will not be disruptive to other commercial or residential neighbors. The property owner, applicant, or designee shall be responsible for immediately resolving any problems associated with the activity and/or issues of concern raised by neighbors. ■■ (PIng.) \_\_\_\_\_
  
- 11. If it is found that the permitted hours of operation are not appropriate to mitigate impacts on neighboring properties, at the discretion of the Police Department or Code Compliance Division, the permitted hours of operation may be revised. ■■ (PIng.) \_\_\_\_\_
  
- 12. A separate Building Permit is required for any proposed tenant improvements. Plans to construct new building, add or alter the existing building configuration, change in use, add or alter structural, mechanical, electrical or plumbing features of the project must be reviewed and approved through a separate building plan check / permit process. *[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20]* (Bldg.)\_\_\_\_\_
  
- 13. Current restaurant use is approved for 49 total occupants indoors. *[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20]* ■■ (Bldg.)\_\_\_\_\_
  
- 14. Total seating capacity shall be limited to the number of seats shown on approved plans, that being 46 indoors and 18 outdoors. ■■ (PIng.) \_\_\_\_\_
  
- \* All Conditions of Approval are standard, unless indicated as follows:
  - Denotes modified standard Condition of Approval
  - Denotes project specific Condition of Approval

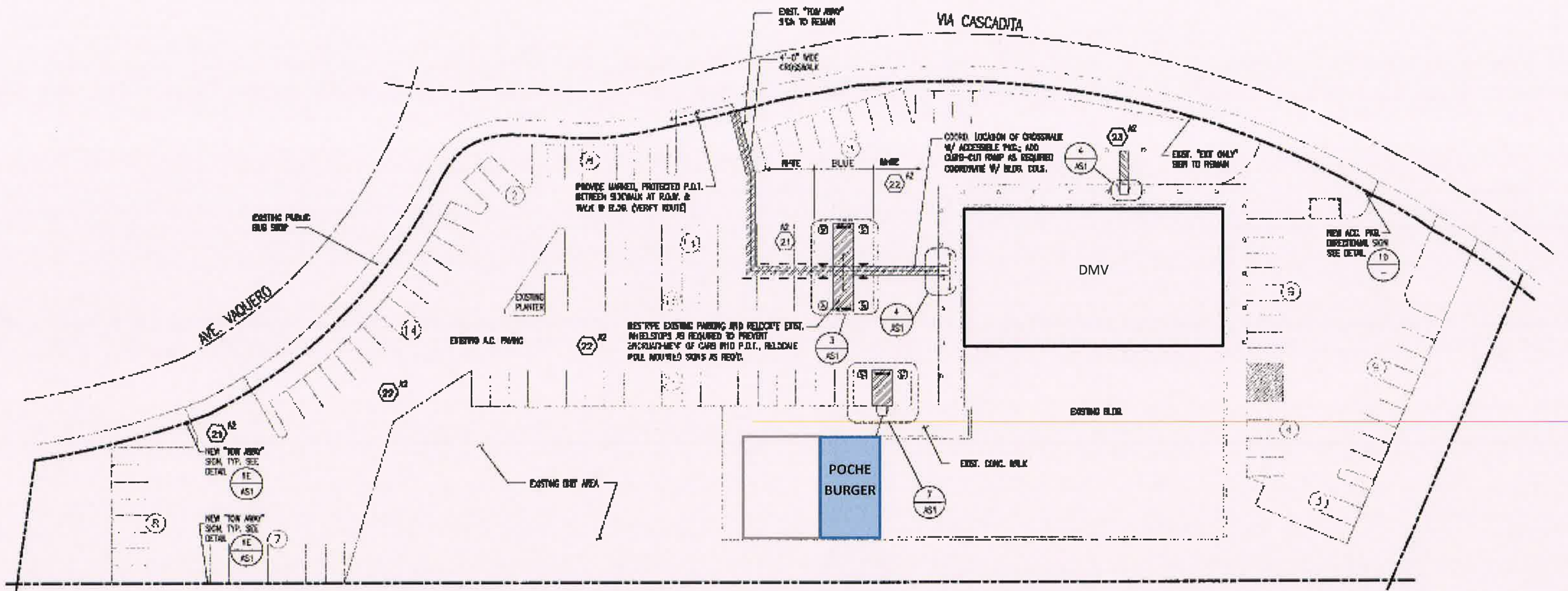


## ATTACHMENT 2

### LOCATION MAP

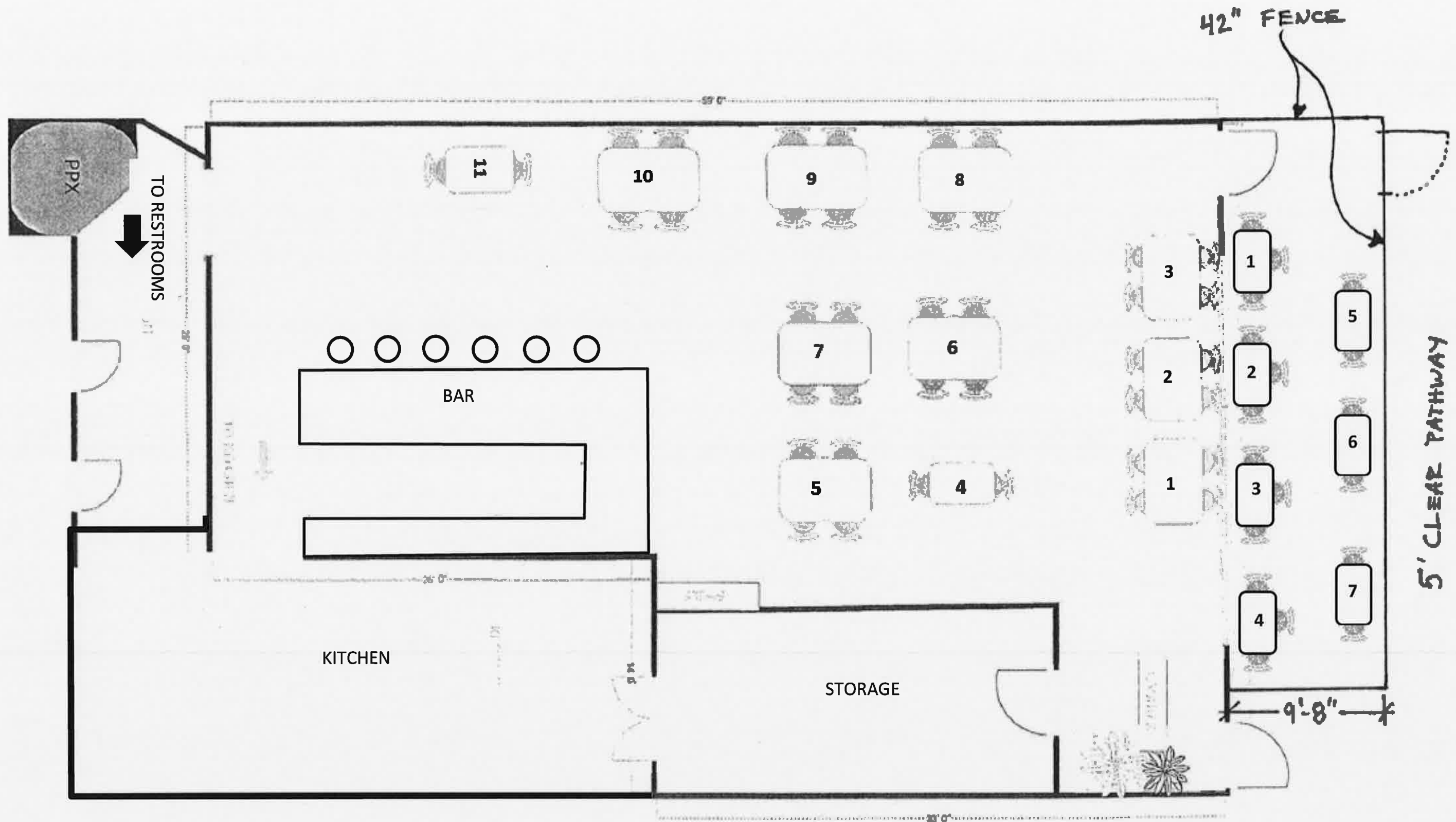
CUP 15-014, Poche Burger and Kitchen Full Alcohol  
2727 Via Cascadita, Suite I





## SITE PLAN

Poche Burger CUP Application for On-Site Full Alcohol Sales



Poche Burger CUP Application for On-Site Full Alcohol Sales