

DEPARTMENT: Planning

BY: Roger Evans

PHONE: 966-5151

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes \_\_\_ No X)

Adoption of a resolution approving the division of APN 4-290-12 (Ivan & Linda Metzger, applicants) in accordance with Section 51119.5 of the California Government Code with recommended findings and condition.

See attached staff report for justification.

BACKGROUND AND HISTORY OF BOARD ACTIONS: None

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- 1. Deny
- 2. Approve with conditions relating to compliance with Section 51119.5 of Calif. Gov. Code.

If 4/5ths of full Board does not approve, the division will not occur.

<p><b>COSTS:</b> (XX) Not Applicable</p> <p>A. Budgeted current FY \$ _____</p> <p>B. Total anticipated costs \$ _____</p> <p>C. Required Add'l funding \$ _____</p> <p>D. Source: _____</p> <p><b>SOURCE:</b> ( ) 4/5ths Vote Required</p> <p>A. Internal transfers \$ _____</p> <p>B. Unanticipated revenues \$ _____</p> <p>C. Reserve for contingency \$ _____</p> <p>D. Description: _____</p> <p>Balance in Reserve for Contingencies, if approved: \$ _____</p>	<p><b>SPECIAL INSTRUCTIONS:</b></p> <p>List the attachments and number the pages consecutively:</p> <p><u>1. staff report</u></p> <p><u>2. Vicinity Map</u></p> <p><u>3. Section 51119.5 Calif. Gov. Code</u></p> <p><u>4. Letter from C.D.F Forester</u></p> <p><u>5. Letter to County Counsel</u></p> <p><u>6. Letter from County Counsel</u></p>
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**CLERK'S USE ONLY:**

Res. No.: 91-455

Ord. No.: \_\_\_\_\_

Vote - Ayes: Unanimous Noes: \_\_\_\_\_

Absent: \_\_\_\_\_ Abstained: \_\_\_\_\_

Approved ( ) Denied

( ) Minute Order Attached

**ADMINISTRATIVE OFFICER'S RECOMMENDATION:**

This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

The foregoing instrument is a correct copy of the original on file in this office.

Date: \_\_\_\_\_

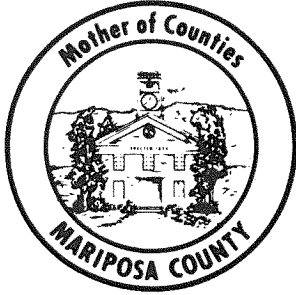
ATTEST: MARGIE WILLIAMS  
Clerk of the Board of Supervisors  
County of Mariposa, State of CA

By: \_\_\_\_\_  
Deputy

Comment: \_\_\_\_\_

\_\_\_\_\_

A.O. Initials: RM/BJ



## Mariposa County Planning and Building Department

**TONY LASHBROOK**  
Planning Director

5101 Jones Street  
P.O. Box 2039  
Mariposa, CA 95338  
(209) 966-5151  
FAX No. (209) 966-5147

September 18, 1991

TO: Mariposa County Board of Supervisors  
FROM: Roger Evans, Planner II  
RE: Division of parcel in Timber Exclusive Zone  
Ivan and Linda Metzger, Applicants (APN# 4-290-12)

**STAFF RECOMMENDATION:** Staff recommends the Board of Supervisors adopt a resolution approving the division of APN 4-290-12 in accordance with Section 51119.5 of the California Government Code with the recommended findings and condition.

**PROJECT DESCRIPTION:** The applicants, Linda and Ivan Metzger propose to divide an 80 acre parcel in the Timber Exclusive Zone (TEZ) into two (2) parcels by gift deeding a separate 40 acre parcel to their son, Robert A. Vargas. The subject property is located two (2) miles south of Greeley Hill on the east side of Ernst Road (APN 4-290-12).

**BACKGROUND:** In November 1980 the Mariposa County Board of Supervisors approved the parcel for inclusion into the Timber Preserve Zone (TPZ) which is now known as the Timber Exclusive Zone (TEZ).

Section 51119.5 of the California Government Code states that parcels zoned as timberland production parcels (Timber Exclusive Zone in Mariposa County) may not be divided into parcels of less than 160 acres unless the original owner prepares a joint timber management plan for the parcels to be created. The joint timber management plan shall provide for the management and harvesting of timber by the original and any subsequent owners, and shall be recorded with the County Recorder as a deed restriction. The deed restriction shall run with the land rather than with the owners, and shall remain in force not less than 10 years from the date the division is approved. The division shall be approved only by a four-fifths (4/5) vote of the full Board of Supervisors and only after recordation of the deed restriction.

It is staff's opinion that the reason State law requires Board action on a division of a timber preserve parcel is to insure that the parcel will continue to be used for timber growth and harvesting purposes. Section 51119.5 of the California Government Code does not provide criteria for Board discussion on issues other than approving the division of the parcel.

LAND USE/ZONING: The 80 acre parcel the Metzgers wish to divide by Gift Deed is within the Mountain General Land Use Classification which has a minimum parcel size requirement of forty (40) acres. The parcel has been designated as being in the Timber Exclusive Zone which is an overlay zoning classification that also has a minimum parcel size requirement of forty (40) acres.

Chapter 16.14 of County Code allows the Metzgers to gift deed the 40 acres to their son. Staff has reviewed the proposed gift deed and has determined it conforms with minimum parcel size and access requirements. The Planning Director has the authority to issue Certificates of Development to the parcels following Board action.

DISCUSSION: The Metzgers submitted a Joint Timber Management Plan prepared by a professional forester which was reviewed by the CDF Forester for adequacy. The CDF Forester commented that the joint timber management plan adequately addresses the growth, management, and harvest of the timber resources on the two proposed parcels.

County Counsel reviewed the application and recommended that the applicant record the Timber Management Plan prior to, or concurrently with the recordation of the gift deed and the Certificates of Development so that the Timber Management Plan can be referenced as a recorded document on both the Gift Deed and Certificates of Development. County Counsel recommended that the applicant include language in the deeds referencing the recorded Timber Management Plan as being appurtenant to the subject properties. County Counsel's recommendations have included as a condition of approval of the division of the parcel.

RECOMMENDED FINDINGS:

1. The project is found to support, accomplish, or have no effect upon the goals, policies, and standards of the General Plan as a whole and will not obstruct the achievement of the Plan's purpose. The subject parcels meet the requirements of Section 16.14.020 of the County Gift Deed Ordinance and will meet the minimum parcel size requirements established for each land use classification in the Mariposa County Zoning Ordinance. This finding is made in accordance with Section 2.600 et. seq. and Section 3.602 of the Mariposa County General Plan.
2. The project was reviewed for compliance with State requirements for dividing a parcel within a designated timber preserve zone. The project will meet the conditions outlined in Section 51119.5 of the California Government Code in that a Joint Timber Management Plan has been approved, the Joint Timber Management Plan has been recorded as a deed restriction, and the division of

Sept. 18, 1991

the parcel within the timber preserve zone has been approved by a 4/5ths vote of the Mariposa County Board of Supervisors.

RECOMMENDED CONDITION OF APPROVAL:

1. The Joint Timber Management Plan shall be recorded as a deed restriction prior to, or concurrently with the Gift Deed document and shall be approved by the Planning Director prior to recordation. The Joint Timber Management Plan shall be referenced on the Gift Deed document and the Certificates of Development. The Gift Deed document and Certificates of Development shall include the following statement:

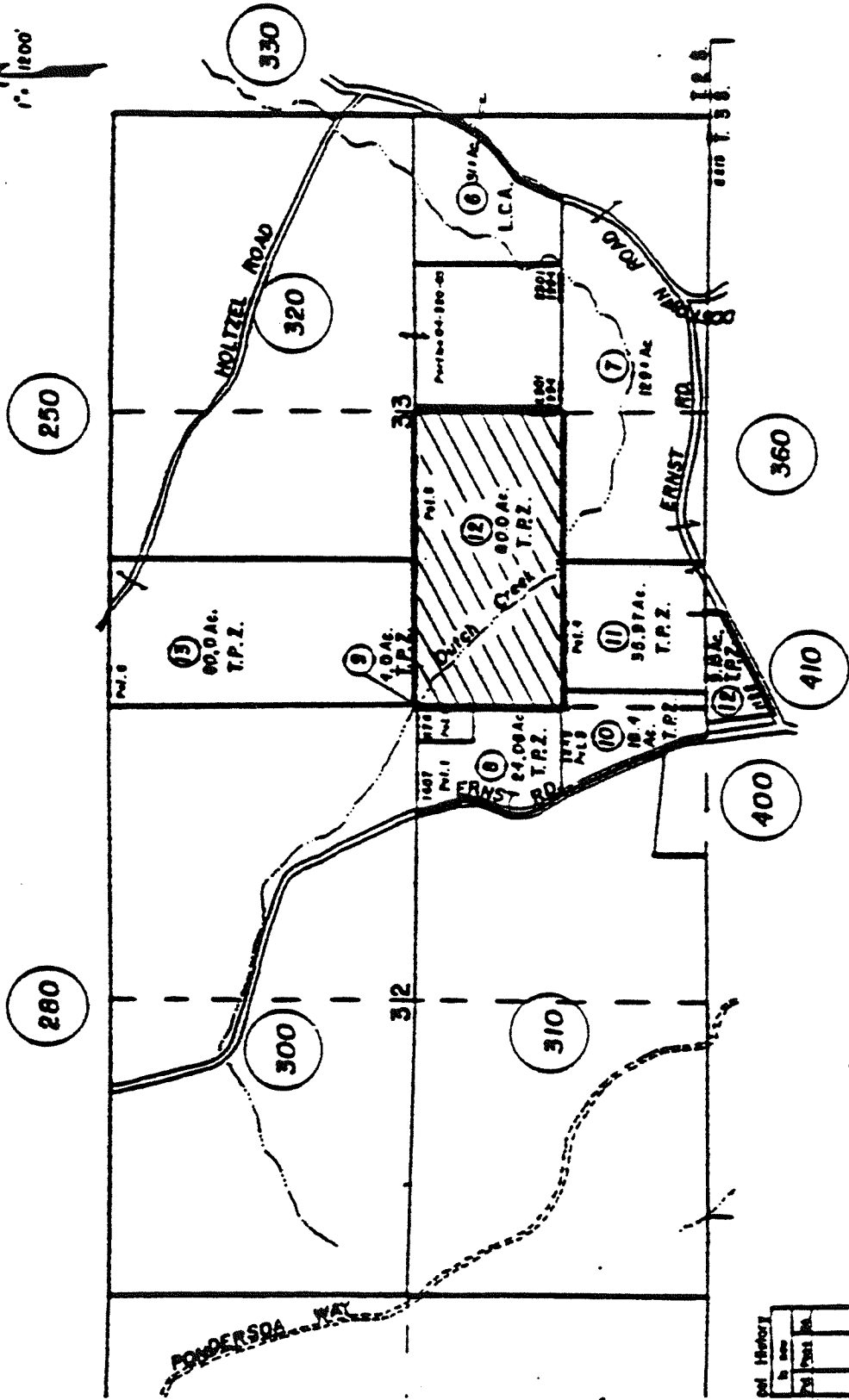
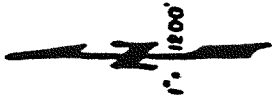
"The subject property shall be subject to the Joint Timber Management Plan prepared for Ivan and Linda Metzger, recorded as Document No. \_\_\_\_\_, Mariposa County Official Records, pursuant to California Government Code Section 51119.5. The Joint Timber Management Plan is recorded as a deed restriction on the subject property and shall remain in force for a period of ten (10) years from the date of recordation of this document."



PORTION T. 2 S., R. 17 E., M.D.B.M.

Tax Area Code  
81000

04-290



Plat History	
No.	Date
29	7/21/88
30	

**§ 51118. Restrictions; enforcement and administration**

Land zoned as timberland production under this chapter shall be enforceably restricted within the meaning of Section 3(j) of Article XIII of the Constitution and the restriction shall be enforced and administered by the city or county in a manner to accomplish the purposes of that section and this chapter.

(Added by Stats.1976, c. 176, p. 305, § 4.5, eff. May 24, 1976. Amended by Stats.1982, c. 1489, § 14.)

**Historical Note**

The 1982 amendment changed "timberland production" to "timberland production"; and changed "in such a manner" to "in a manner".

**Library References**

Zoning and Planning ☞ 761. C.J.S. Zoning and Land Planning § 331.

**§ 51119. Environmental impact report; exemption**

Any action of the board or council undertaken to zone a parcel as timberland production pursuant to Section 51112 or 51113 is exempt from the requirements of Section 21151 of the Public Resources Code.

(Added by Stats.1976, c. 176, p. 305, § 4.5, eff. May 24, 1976. Amended by Stats.1977, c. 853, p. 2567, § 9, eff. Sept. 17, 1977; Stats.1982, c. 1489, § 15.)

**Historical Note**

The 1977 amendment changed "Adoption of timberland preserve zones pursuant to this chapter" at the beginning of the section to "Any action of the board or council undertaken to zone a parcel as timberland preserve pursuant to Section 51112 or 51113 of the Government Code".

Application of provisions of Stats.1977, c. 853, p. 2567, to all activities undertaken pursuant to Stats.1976, c. 176, p. 293, see Historical Note under § 51100.

The 1982 amendment changed "timberland preserve" to "timberland production"; changed "shall be exempt" to "is exempt"; and deleted "of the Government Code".

**Library References**

Health and Environment ☞ 25.00(2). C.J.S. Health and Environment § 70 et seq. 119 et seq.  
Zoning and Planning ☞ 131. C.J.S. Zoning and Land Planning § 12, 14, 16.

**§ 51119.5. Division of land zoned as timberland production into parcels; joint management plan; deed restrictions; approval**

Parcels zoned as timberland production under this chapter may not be divided into parcels containing less than 160 acres unless the

**§ 51119.5****CITIES AND COUNTIES****Title 5**

original owner prepares a joint timber management plan prepared or approved as to content by a registered professional forester for the parcels to be created. The joint timber management plan shall provide for the management and harvesting of timber by the original and any subsequent owners, and shall be recorded with the county recorder as a deed restriction on all newly created parcels. The deed restriction shall run with the land rather than with the owners, and shall remain in force for a period of not less than 10 years from the date division is approved by the board or council. The division shall be approved only by a four-fifths vote of the full board or council, and only after recording of the deed restriction.

(Added by Stats.1976, c. 176, p. 305, § 4.5, eff. May 24, 1976. Amended by Stats.1977, c. 853, p. 2567, § 9, eff. Sept. 17, 1977; Stats.1982, c. 1489, § 16.)

**Historical Note**

The 1977 amendment substituted provisions of a joint timber management plan by the "original owner" for admission by "owners of resulting parcels"; omitted provisions relating to contracts for joint management and a requirement that the owners be bound by the provisions of a management plan for a minimum period of 10 years; added the second and third sentences; and inserted in the fourth sentence; and inserted in the fourth sentence.

ence the phrase "and only after recording of the deed restriction".  
Application of provisions of Stats.1977, c. 853, p. 2567, to all activities undertaken pursuant to Stats.1976, c. 176, p. 293, see Historical Note under § 51100.

The 1982 amendment substituted "timberland production" for "timberland preserve" and "the" for "such" throughout the section.

**Library References**

Zoning and Planning ☞ 278.

C.J.S. Zoning and Land Planning § 110, 127, 128, 132, 137 to 140, 142, 146.

**Article 3****REZONING****Sec.**

51120. Desire of owner to rezone parcel; procedure.  
51121. Intent not to extend term of zoning; procedure.

Article 3 was added by Stats.1976, c. 176, p. 305, § 4.5, eff. May 24, 1976.

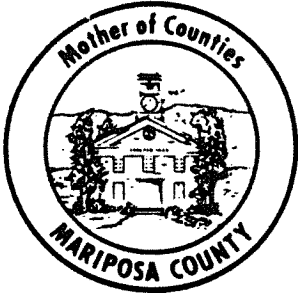
Operative effect, see *Historical Note under Revenue and Taxation Code* § 38101.

**United States Code Annotated**

Forest and rangeland renewable resources planning, see 16 U.S.C.A. § 1600 et seq.

**§ 51120. Desire of owner to rezone parcel; procedure**

(a) If the owner desires in any year to rezone a parcel from its current timberland production zone, the owner shall give written no-



**Mariposa County** **FILE COPY**  
**Planning and Building Department**

**TONY LASHBROOK**  
Planning Director

5101 Jones Street  
P.O. Box 2039  
Mariposa, CA 95338  
(209) 966-5151  
FAX No. (209) 966-5147

June 25, 1991

California Department  
of Forestry  
5366 Highway 49 North  
Mariposa, CA 95338  
Attn: Dan Seamont

RE: Ivan and Linda Metzger  
Gift Deed of property within  
Timber Exclusive Zone

Dear Mr. Seamont:

Ivan and Linda Metzger wish to divide an 80 acre parcel into two (2) parcels by Gift deeding a separate 40 acre parcel to their son, Robert A. Vargas. The property is in the Timber Exclusive Zone (40 acre minimum parcel size) which is specifically designed as a Timber Preserve Zone for the growing and management of timber. Land use within the Timber Exclusive Zone is restricted for a minimum of ten (10) years to the growing and harvesting of timber.

The division of the 80 acre parcel is permitted under the County Zoning Ordinance and the Gift Deed Ordinance, but the division must meet the provisions of Section 51119.5 of the California Government Code which requires that a Joint Timber Management Plan be prepared by a registered professional forester for the parcels to be created. Please review the attached Joint Timber Management Plan and see if it adequately addresses the management and harvesting of timber resources on the two (2) newly proposed parcels. If you have any comments, please send them to this office.

If you have any questions, please call me at (209) 955-5151.

Sincerely,

Roger D. Evans,  
Assistant Planner

Enclosure

RDE:lpb

cc: Don Starchman



STATE OF CALIFORNIA - THE RESOURCES AGENCY

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DEPARTMENT OF FORESTRY  
AND FIRE PROTECTION  
5366 Highway 49 North  
Mariposa, Ca 95338

RECEIVED

JUL 17 1991

MARIPOSA COUNTY  
PLANNING DEPARTMENT

July 16, 1991

Roger D. Evans  
5101 Jones Street  
P.O. Box 2039  
Mariposa, Ca. 95338

Dear Mr. Evans:

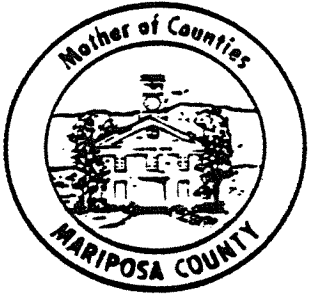
I have reviewed the Joint Timber Management Plan for Ivan & Linda Metzger, and I feel it adequately addresses the management and harvesting of timber resources of the two newly proposed parcels.

Sincerely,



Dan Seamont  
Area Forester

tc



## Mariposa County Planning and Building Department

TONY LASHBROOK  
Planning Director

5101 Jones Street  
P.O. Box 2039  
Mariposa, CA 95338  
(209) 966-5151  
FAX No. (209) 966-5147

July 23, 1991

TO: Jeffrey Green, County Counsel  
FROM: Roger Evans, Planner II *RE*  
SUBJECT: Certificate of Development (Gift Deed), Ivan and  
Linda Metzger, Applicants.

### BACKGROUND

Ivan & Linda Metzger propose to divide an 80 acre parcel into two (2) parcels by Gift Deeding a separate 40 acre parcel to their son, Robert A. Vargas. The property is in the Timber Exclusive Zone (TEZ) which is specifically designed as a timber preserve zone for the growing, management, and harvesting of timber. Section 17.44.010 of the County Zoning Ordinance specifies the development standards within the Timber Exclusive Zone. Land use under a TEZ shall be restricted for a minimum of ten (10) years to the growing and harvesting of timber, and to compatible uses approved by the County. Prior to acceptance into the TEZ, a parcel must have a timber management plan prepared by a registered professional forester presented to and approved by the Mariposa County Planning Commission.

In November 1980, Ivan & Linda Metzger had a registered professional forester prepare a timber management plan for a 251.58 acre parcel. The timber management plan was adopted and ratified by the County Planning Commission and the parcel approved for inclusion into the Timber Exclusive Zone (TEZ).

In August 1989, the Metzgers requested the issuance of Certificates of Compliance on seven (7) historic parcels comprising the 251.58 acre parcel. On September 9, 1989, the Mariposa County Planning Commission approved the issuance of the seven Certificates of Compliance. The 80 acre parcel the Metzgers propose to divide by Gift Deed was issued a Certificate of Compliance on October 19, 1989, recorded as Document No. 89-5534.

1. Should the County prepare the deed restrictions and record it concurrently with the Gift Deed after approval by the Board? If so, what items need to be addressed in the deed restrictions in order for it to comply with Section 51119.5 ?
2. Should the applicant be required to provide the appropriate deed restrictions for County review and approval? If so, what items need to be addressed in the deed restrictions in order for it to comply with Section 51119.5

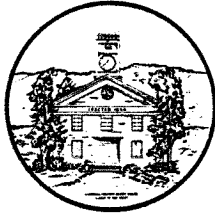
If you have any questions regarding this matter, Please call me.

#### LIST OF ATTACHMENTS

1. Vicinity Map
2. Gift Deed document
3. Joint Timber Management Plan

OFFICE OF

JEFFREY G. GREEN  
County Counsel  
(209) 966-3625



County Courthouse  
P. O. Box 189  
Mariposa, CA 95338

The County Counsel

MARIPOSA COUNTY

August 2, 1991

RECEIVED

AUG 5 1991

MARIPOSA COUNTY  
PLANNING DEPARTMENT

TO: Roger Evans, Planner II  
FROM: Jeffrey G. Green, County Counsel  
RE: Certificate of Development for Ivan and Linda Metzger

Dear Roger:

Thank you for your memo of July 23, 1991 regarding the above matter. You have requested some information from my office relative to language necessary to comply with Government Code Section 51119.5 which deals with deed restrictions relative to a timber management plan. In my opinion there should be a notation on the actual Certificate of Compliance that indicates that the parcels created are subject to a timber management plan pursuant to Government Code Section 51119.5, and in addition thereto I would suggest that the Certificate of Compliance require that the deeds themselves contain that language. The timber management plan should additionally be recorded prior to the recordation of the Certificate of Compliance and the deeds so that the timber management plan can be referred to as a recorded document.

I do not believe that it is necessary for the County to prepare the necessary paperwork. It would be a simple statement by the applicant that the Certificate of Compliance is subject to a timber harvest plan on the properties and that plan should be identified by recordation marks. In addition, the same kind of language should be placed on the deeds relative to the timber management plan, again referenced by recording marks.

Should you have any additional questions regarding this matter please feel free to contact me.

Very truly yours,

Jeffrey G. Green  
County Counsel

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