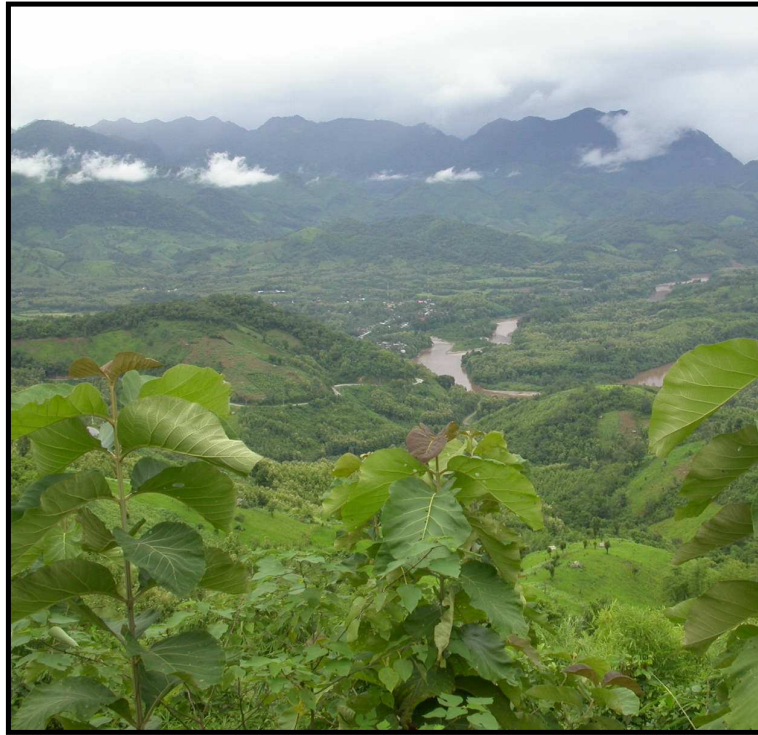


**Concession or Cooperation?
Impacts of Recent Rubber Investment on Land Tenure
and Livelihoods:
A Case Study from Oudomxai Province, Lao PDR**



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Abbreviations

GAA – German Agro-Action
GoL – Government of Lao PDR
LN – Luang Namtha
LSUAFRP – Lao-Swedish Upland Agriculture and Forestry Research Program
MAF – Ministry of Agriculture and Forestry
MoF – Ministry of Finance
MPI – Ministry of Planning and Investment
NAFRI – National Agriculture and Forestry Research Institute
NLMA – National Land Management Authority
NUoL – National University of Laos
PAFO – Provincial Agriculture and Forestry Office
PG – Provincial Governor
PM – Prime Minister
PPID – Provincial Planning and Investment Department
PRC – People’s Republic of China
SPC – State Planning Committee
URDP – Upland Research and Capacity Development Program
VT – Vientiane Times

Executive Summary

Land use rights in the Lao People's Democratic Republic (Lao PDR) for agricultural and forest lands have been allocated by the state to rural villages and local households through the Land and Forest Allocation (LFA) procedures, and to private sector business investors (both foreign and domestic) through concession agreements and various forms of "cooperative" lease arrangement. Over the last decade, the relationship between these approaches to land allocation has increasingly raised questions about the impacts of private sector agribusiness investment on rural livelihoods and associated issues relating to the tenure security of rural households. The rapid increase in the development of rubber plantations in recent years has played a special role in this debate. This report examines the broad transition from rural village and household-oriented land allocation to land allocation oriented toward foreign investors. The research is based on interviews and the review of documentary evidence collected in 2007 and 2008 in the Province of Oudomxai, where allocation of agricultural and forest land to villages and households took place in the late 1990s, and where rubber plantation development is currently occurring at a rapid pace using a variety of approaches.

The research team set out to answer three research questions: 1) What are rubber investment's key features with regard to the investment process, investor identity, location, activities and scale? 2) How was the "upland" landscape originally zoned and mapped as part of the LFA process, and later re-zoned and mapped by local authorities and foreign investors? 3) What are the impacts of rubber investment in upland areas on the land use and livelihoods of the villagers involved?

At the provincial level, investment in tree plantations has been targeting upland areas as part of the Government's effort to replace shifting cultivation with rubber and eucalyptus. Nine plantation investment projects – seven involving rubber and two eucalyptus – in five of Oudomxai's seven districts were approved between October 2003 and July 2007 alone. Provincial officials face a number of challenges as they use their understandings of investment policy and law to negotiate the issues that confront them: mismatches between commitments to investors and farmers' willingness to involve themselves in "cooperative" investment; a shortage of staff who can carry out social and environmental impact assessment; and a regulatory landscape that, as the PLMA gains more of a role in the investment process, produces new questions about governmental rights and responsibilities. More fundamentally, though, even with various sources of confusion about the investment process, this much is clear: rubber investment is deliberately targeting upland agricultural land in the name of shifting cultivation stabilization through a strategy of land use zoning aimed at finding land for rubber companies. As this process proceeds, it has produced a series of objections from farmers who do not want to see their land – some of which has already been converted to cash cropping – "given away" to investors as "concessions." Much of the confusion about the meaning of "cooperative" investment (the "two-plus-three" and "one-plus-four" policy models) stems from this basic conflict, and in particular from the practice of tree-sharing (*beng ton*) in which plot-level land rights get reshuffled, villagers are hired as wage laborers (if only in the short term), and immature rubber trees are allocated to villagers, but also to investors.

In examining the zoning process, our objective is to put some specific details on a process that is often discussed in overly general terms: surveying. We show how three types of landscape classification – Land and Forest Allocation, investment project-specific surveying, and district-level zoning – have produced pictures of the upland landscape that differ by scale, spatial resolution (detail), category system, and legal status. We focus on surveying as a key transition point between provincial-level policy and individual projects because it is the process through which land categories that are used in policy debates (e.g., agricultural land) get put into practice. While Oudomxai lacks an industrial land use map, the incompleteness in zoning information is not due to an absence of mapping, but a difficulty in coordinating and integrating the mapping that has been done at different times. In turn, this has produced situations where, as elaborated in the Sino-Lao case study, investor surveys begin with little or no previously existing zoning information.

In looking at a single-project case study, we present a case study of how disagreements about the fairness of a cooperative investment project erupted into a property conflict in which each side – the Sino-Lao project on one side, the farmers who did not want to participate in the project on the other side – tried to reinforce their own beliefs about land tenure in the project area. The Sino-Lao project acquired government-allocated rights to land through a combination of surveying and contractual language. Under the terms of the project, participating villagers worked for wages during the clearing, planting and weeding phases, and then received ownership over half of the rubber trees planted, which they were then expected to distribute among themselves or manage collectively. In other words, land was allocated into the Sino-Lao project and then half of it was subsequently passed back to villagers, albeit with different plot arrangements. Ultimately, this tree-sharing scheme ran into problems when villagers could not agree how to divide up their share of the trees. A larger problem ensued in the meantime, however, as households with their own farmland in the project area were forced to either participate in the project (and keep their land) or “offer” their land use rights to others – a project design based on local officials’ argument that because formal land titles were never issued, temporary land use rights that had been allocated earlier could be rescinded without compensation. Facing this choice, a number of households sold their land to local “elites” and outsiders who were willing to speculate that some form of compensation would be paid – a process which caused an appreciable slowdown in the project.

It is possible that some of these difficulties can be resolved by improvements in communication between farmers and investors, between investors and local officials, and between different levels of government. Farmer-investor communication may ultimately lead to truly participatory approaches that explain the project in complete detail to farmers from the very beginning and give them a voice in project design; unless they clearly understand the project, villagers will not commit themselves to it. Moreover, better communication – both between investors and officials and between officials at different levels of government – may be able to help alleviate or prevent the types of land conflict that occurred in the Sino-Lao project. On the other hand, better communication will not solve every problem. The Sino-Lao project has highlighted two key economic issues where there is, and where there will remain, a tradeoff between companies and farmers: benefit sharing agreements between companies and participating farmers, and land access between companies and non-participating farmers. In both of these areas, the government has a key role to play in maintaining a fair and appropriate balance. As problems with rural agribusiness investments – and with rubber projects in particular – have become more widespread, the need for better surveying has been widely acknowledged. This report shows just how important it is to make sure that “better” surveying focuses not simply on biophysical suitability, but on social suitability as well.

Three of the lessons from this study translate directly into recommendations for future research, regulatory action and other development efforts that work at the nexus of investment and development, especially in upland areas. First, *work to enhance the transparency of foreign investment*. Cooperation from local officials, company representatives and villagers was essential to constructing the case study, and provided the key to investigating what is otherwise often simply called “implementation problems.” Second, *listen to farmers and take what they say seriously*. Farmers’ accounts of landownership and local power relations in the case study village, as well as their recollections of cash-cropping and migration histories, were essential to understanding the mechanics of how the land conflict unfolded as Sino Lao attempted to bring land into the project, and why these efforts were viewed locally as a concession. Third, *look beyond specific crops and projects to the larger context of development options*. What emerged as a dispute about property was – due to the connection between landownership and land use – in many ways a debate about development. The Sino-Lao case points to the need to widen the discussion of rural residents’ development options beyond this or that particular project, crop, or even tenure or cooperation system, and to move the debate forward using principles of transparency and inclusiveness.

1. Introduction

As the Lao People's Democratic Republic continues its integration into regional and global systems of market- and aid-based development, this process is changing the demands and opportunities faced by rural communities and the landscapes they inhabit. Since the mid-1980s, a number of government programs have sought to improve administrative coordination over rural areas in order to foster investment in agribusiness commodities like plantation wood, export crops like maize and sesame, and more recently, industrial crops like rubber and jatropha. An important motivation for these efforts is to stimulate the transition "from traditional forest-based swidden agriculture and livelihood systems toward sedentary and intensive agriculture and commercialization" (World Bank 2008:v; also see SPC 1999; NAFRI 2003, 2007; Vandergeest 2003; GoL 2004). The provision of land use rights, initially to farmers and more recently to companies (both foreign and domestic), is a key aspect of government efforts to attract and keep investment in land-based commodity development. As government officials and development professionals gain experience with investment projects, this two-pronged approach of land allocation to farmers and investors has increasingly come to be the focus of ongoing efforts to achieve the "triple bottom line" of environmentally sustainable "growth with equity" (GoL 2004:1-2).

Rubber trees in particular have emerged in the last half decade as one of the most prioritized new investment commodities. Rapid expansion of this crop in rural areas has raised a series of questions about land tenure security of rural populations and the risks and opportunities of using rubber production as a poverty alleviation strategy in the country. These questions focus on the economic, social and environmental impacts of upland rubber development, the risks and rewards of cooperating with foreign rubber companies, and the regulatory opportunities for minimizing negative impacts and maximizing potential benefits from such development for rural populations.

These questions call for informed policy responses from the government. Answering them properly requires empirical data about how rubber and other types of agribusiness and plantation investment are actually occurring. An impressive body of information already exists. This includes academic studies (Diana 2006; Barney 2007; Manivong & Cramb 2008), government research reports (NAFRI 2003, 2007), development project reports (Alton, Bluhm & Sananikone 2005; Shi 2008) and Vientiane Times articles (VT 2006a, 2006b, 2007a). This body of research has taught us much (see Dwyer 2007 for a review), but remains incomplete in an important way: *These studies have expanded, rather than narrowed, the uncertainty* about how rubber development is occurring, and in particular about what terms like "concession", "landownership" and "participation" mean *in practice* in the context of rubber development. Most, if not all, of these studies point to the need for further investigation in order to understand, if nothing else, the variation across provinces and projects in how investment is happening. Most of these studies have examined projects where rubber tapping has not yet begun. Moreover, the studies that *have* looked at areas where rubber tapping has already begun (Alton, Bluhm & Sananikone 2005; Diana 2006 and Manivong & Cramb 2007) examine smallholder efforts, which entail different risks and opportunities from projects that work with large outside investors. That these studies, first, use their investigations of smallholder production to voice strong concerns about "concession-style" rubber development and, second, focus largely on just two geographic locations,¹ only reinforce the point: The question of how to design and implement a rubber project that is based on cooperation with a foreign investor in order to alleviate poverty remains widely discussed, but almost entirely unanswered.

1.1. Research Questions

In this report, we contribute to this discussion by focusing on investor-based rubber development. We pose three research questions: First, what are rubber investment's key features with regard to the investment process, investor identity, location, activities and scale? Second, how was the "upland"

¹ Alton et al. and Manivong & Cramb focus on Had Nyao village in Namtha district, while Diana focuses on two villages in the borderlands of Sing district.

landscape originally zoned and mapped as part of the Land and Forest Allocation process, and later re-zoned and mapped by local authorities and private investors as a result of the rubber investment? Third, what are the impacts of rubber investment in upland areas on the land use and livelihoods of the villagers involved?

We focus on Oudomxai province, which has experienced a boom in rubber investment in recent years but has received less attention than the neighboring province of Luang Namtha. The only other study we know of relating to rubber in Oudomxai (NAFRI 2007) focuses on smallholder investment; the focus of this research is on investment by large, mostly foreign, companies. Oudomxai sits at the crossroads of two major transit routes – Route 13 (from Luang Prabang to Luang Namtha and north to China via Boten) and Route 2 (from the Mekong River, via the Beng River valley, to Phongsaly and onward to both China to the northwest and Vietnam to the northeast). Oudomxai also has an abundance of “uplands”, areas dominated by the swidden agricultural systems that are increasingly being targeted for rubber plantation development. The combination of road access and the prevalence of upland areas has had an important – although not entirely-determining – influence on the geography of rubber investment, from the macro scale of where projects are located to the micro scale of how individual projects acquire access to specific pieces of land.

Research question 1 focuses on rubber investment at the provincial level. To answer this question, we draw on interviews with provincial officials and other key informants to answer a number of related sub-questions: What is the investment process, both in theory and in practice? What companies are involved? Where are they working, what are they doing, and on what scale? What successes or problems are they encountering as they move from planning to implementation?

Research question 2 asks how land- and investment-based categories – key terms that emerge from answering question 1 – are made *operational* through the processes of zoning and surveying upland landscapes. We examine three types of activities – zoning from the Land and Forest Allocation program,² rubber project surveys, and district-scale land use planning – by reference to available maps. These maps come from all over Oudomxai province, but they are not an exhaustive (complete) collection. Rather, we use them to compare the ways in which different zoning and surveying efforts have classified and mapped the upland landscape. This helps us engage in an important ongoing conversation about what it means to conduct “proper” pre-project surveying and zoning (VT 2008f; also see VT 2007b, 2008b, 2008c, 2008e).

Research question 3 investigates how the arrival of rubber investment into the upland landscape has affected land use and livelihoods. To answer this question, we present a case study of a single rubber project (the Sino-Lao project). Continuing the thread from question 2, we focus first on how this project conducted its surveys, and how they relate to earlier zoning efforts done during the LFA process. We then focus on a single village case study to examine the effects the project implementation has had on the land tenure security and livelihoods of the local groups and individuals residing there.

1.2. Practical Contribution

This report contributes to three larger, national-level, discussions that are topically distinct yet practically intertwined. The first discussion is about *rural poverty and livelihoods in Lao PDR in the era after Land and Forest Allocation*; the second is about *the definition and regulation of investment models in the agriculture and plantations sector*; the third is about *ongoing efforts to strengthen the Lao PDR’s legal system*. Because these discussions are somewhat distinct (rural livelihoods,

² Land and Forest Allocation refers to a process of zoning and property formalization in which village boundaries are determined, agriculture and forest lands are zoned for different purposes, and agricultural or degraded forest lands are allocated to farmer households for their use. In this report, we depart from the longer and more formal English name for this program (the Land Use Planning and Land Allocation program, or LUP/LA), using instead the term “Land and Forest Allocation”, or LFA, which is a closer translation to the common Lao language term (*Mop Din Mop Pa*).

regulation of private sector agribusiness investments and legal reform), they each deal with different literatures, government responsibilities and areas of expertise. But the on-the-ground linkages between livelihoods, investment, and regulation mean that all three of these topics influence poverty – or conversely poverty alleviation – in rural villages.

From a livelihoods perspective, this report presents a case study of how rubber investment, population resettlement, land allocation and land grabbing all act together to affect village livelihoods and poverty. Land and Forest Allocation (LFA) and population resettlement are two of the most widely-studied topics in contemporary development research in Lao PDR (see, respectively, Jones 1998; SPC 1999; MoF 2002; Vandergeest 2003; GTZ 2004; Ducourtieux, Laffort & Sacklokham 2005; Moizo 2008; Fujita & Phengsopha 2008 and Alton & Rattanavong 2004; Evrard & Goudineau 2004; Lyttleton et al. 2004; Baird & Shoemaker 2007; Rigg 2005; Bechstedt & Gilbos 2007). While most studies have reached negative conclusions about both processes, most authors emphasize that situations differ between locations, and that sometimes different interpretations of even the same situation are possible – for example, if village elders and young people disagree on whether a move is voluntary or not (Lyttleton et al. 2004). Most importantly for our purposes, few of these studies have investigated the relationship between their main concern (either land allocation or resettlement) and the investment boom of the last few years, which relies heavily on a resource which land allocation and resettlement also affect: “available” land. Looking at a single village, it becomes possible to see not only the impact of rubber investment on land use and livelihood, but also two other key impacts as well: first, the impact of villagers’ earlier livelihood efforts, many of which grew out of the land allocation process, on the implementation of rubber investment; and second, the impact of resettlement and land claiming (*kanchapchong din heh wai*) on land availability and project participation. This points to the importance of incorporating all of these issues into a coherent, interlocking regulatory framework. It furthermore suggests, counter to uniformly negative accounts of LFA, that some aspects of LFA – for instance, its creation of agricultural production zones – may be useful to efforts to regulate rubber investment.

From an investment policy perspective, this report presents *a case study of cooperative or “two-plus-three” (2+3) rubber investment*. This investment model has emerged over the last few years in policy discourse as an alternative to concession-based investment (Luang Namtha PG 2005; VT 2007c, 2008g, 2008i; Shi 2008). As various economic, social and environmental problems with concession-based development emerged during the last few years (reviewed in Dwyer 2007), cooperative investment has been explained as the preferred policy alternative in the Lao PDR because it seeks to bring investors and farmers together in ways that avoid allocating farmers’ land to companies and hiring them as wage laborers (VT 2007c, 2008g; NAFRI 2007:39; Barney 2007; NAFRI 2003:3). Concessions, in the legal meaning of the term,³ are long-term rentals of large areas of undeveloped state land to investors (GTZ 2006:14). Cooperative, or “two-plus-three”, investment, in contrast, refers to an arrangement in which “local residents provide land and labor [the 2 in 2+3] while the investing company provides funding, materials and a market [the 3 in 2+3]” (VT 2008g). Unfortunately, none of the official descriptions explain what it means to “provide” land and labor. As a result, it is not clear whether or not cooperative investment is intended to involve two key features of the concession model: first, the spatial rearrangement of land rights and associated planting

³ “The literature [on land concessions] contains two generally distinct uses of the term: a broad use (to concede) and a narrow use (to lease or rent). Not surprisingly, the broader use – to concede, or give something in exchange for something else – occurs more commonly in non-specialized use, while the narrower use – to lease or rent – usually occurs in settings where property law is the assumed discourse” (Dwyer 2007:2). The 2005 and 2008 implementation decrees for the Land Law define “concession” as follows: “the agreement between the state with the concession applicant, in which the state gives land located in some place to the concession applicant for using for a specific purpose as authorized by the state. The land concession holder shall pay the concession charge and the land royalty” (Decree No.101/PM Vientiane Capital City, 20 April, 2005); and “an authorization for concession granted to individual or juridical entity by giving the right to use the land for a specific purpose based on the conditions and term specified in the legal contract. The land concession holder shall pay the concession fee, natural resources fee, and other fees as specified in the Law” (Decree No. 88/PM, Vientiane Capital City, 03 June 2008).

arrangements, and, second, wage labor. In the last year or so, the earlier notion that cooperative investment and concessions constituted two distinct “models” of investment has been challenged by both researchers and by official explanations. In Luang Namtha, the “one-plus-four” system of cooperative investment, in which villagers “provide” only land, has been called “concession-like” because it involves wage labor, the division of rubber trees rather than latex, and the creation of large company plots (Shi 2008:34-39, 46). And in Savannakhet and Phongsaly, officials have attempted to solve problems with “land concessions that covered farming land” by “mobilizing” farmers to participate in projects that, echoing the above description of cooperative investment, “are obliged to provide seeds, funding, planting techniques and marketing, while people contribute labor and land” (VT 2008b). In showing an example of a rubber investment project that has aspects of both the cooperative and concession models, this report challenges the widely-held assumption that rubber projects are *either* two-plus-three *or* concession projects. It contributes to an increasingly sophisticated discussion of regulatory issues that focuses less on *how investment projects are classified*, and pays greater attention to *what investment projects actually do in practice*. The key issues in this regard are land tenure, planting arrangements, labor arrangements, benefit sharing, participation options, compensation and alternatives to participation.

Finally, this report presents *a case study of land law and investment law in practice*. As Lao PDR continues its transition to a system of law-based governance and regulation (Wong 2006; UNDP 2007; VT 2006c, 2007d, 2008h), empirical studies of how law is being used “in the field” are critically important. These sources of information tell us which laws are considered “relevant”, and how these laws are being interpreted and applied. Many development reports (e.g., GTZ 2004) contain reviews of “relevant” legislation, but these are generally limited to reading the text of the law (and associated decrees) rather than looking at how these laws and decrees are actually being applied in particular project areas.⁴ Similarly, while acknowledgements of shortcomings with law enforcement and legal interpretation appear frequently in, among other places, *The Vientiane Times*, examples of how the law is being interpreted and enforced are less common. With a number of changes in land and investment currently being discussed and implemented by various government agencies – for example: communal land titling (GTZ 2007), development of a new implementation manual for the LFA process, and the elimination of provincial-level restrictions on the approval of investment (VT 2008d) – empirical research on land and investment law could not be more timely.

1.3. Report Structure

The remainder of the report is comprised of three sets of findings (section 2), plus a conclusion, references and annexes. We organize section 2 according to the three research questions presented above, beginning with investment at provincial level, then examining the zoning and surveying process, and finally presenting the case study. As mentioned above, we divide the case study into two parts, examining the survey for the entire project first before considering actual land use and livelihoods in a single village. Annex 1 provides an explanation of the origins of the research project; our timeline for fieldwork, analysis and writing; a summary of our data collection and analysis methods; and, our use of terminology. Subsequent annexes are explained in section 2.

2. Findings

In this section, we present our research findings, which we organize into three parts. These parts correspond to our three research questions. Section 2.1 describes the key features of rubber investment in Oudomxai. This section focuses on the history and macro-scale geography of plantations investment in the province (section 2.1.1); the procedure used to evaluate and approve new investments (section 2.1.2); a discussion on the confusing and often misleading use of terminology to describe the investment models (section 2.1.3); and a summary of the issues relevant to project implementation in the plantations sector in Oudomxai (section 2.1.4).

⁴ One exception is GTZ’s study on land markets (GTZ 2005), which investigated “the implementation and interpretation of legal procedures and regulations at provincial, district and village level” (v), and concluded that “[t]he responsibilities for the allocation of state land leases and concessions at the various administrative levels need further clarification” (vii).

Section 2.2 examines how the key features of rubber investment identified in section 2.1 interact with upland landscapes from the perspective of pre-project surveying and zoning. Surveying and zoning are critically important to the investment process because they are the means through which the *existing* landscape gets represented in plans to re-make land use by bringing in new projects. We present the three kinds of zoning and surveying we encountered during our fieldwork: zoning maps from the Land and Forest Allocation process (section 2.2.1), survey maps made as part of rubber projects (section 2.2.2), and district-scale land use planning maps made before and after rubber investment began (2.2.3).

Section 2.3 presents our case study of one of the rubber projects working in Oudomxai, the Sino-Lao project, which we describe briefly in section 2.3.1. In the following two sub-sections, we examine the effects of the project on the land use and livelihoods of villagers in the project area. We examine this from two viewpoints – examining the entire project, where we look at how the project identified, negotiated and gained access to land for its rubber planting activities (section 2.3.2), and examining a single village (Homxay village), where we look at the effects of the Sino-Lao project activities on earlier forms of land use and livelihood (section 2.3.3). We also present findings about how Land and Forest Allocation, land claiming, and resettlement have affected the Sino-Lao project via their impact on “available” land.

2.1. Provincial Level Investment

According to the Provincial Planning and Investment Department (PPID), which is responsible for promoting domestic and foreign investment, most investment in Oudomxai is from foreign investors. China is the most important investor, followed by Vietnam, Malaysia and Korea. Over half of Oudomxai’s investment by value is in the agriculture and forestry sector, which comprises 54 percent of overall investment, compared to 18 percent in the mining sector and 26 percent in other industries.

In the agriculture and forestry sector, China and Vietnam are the primary foreign investors. Vietnamese investors are investing in various tree plantations, maize and Job’s tears (a cereal crop that is primarily exported to the United States growing health food and supplements market). Chinese investors are investing in rubber, eucalyptus, Job’s tears, jatropha and orchids, but their main focus is on the development of rubber tree plantations. As suggested by the data in Table 1 below, rubber constitutes the majority of Oudomxai’s plantation investment, whether measured in investment value (82 percent), area approved (71 percent) or area planted (88 percent). The PPID staff we spoke to believe that the trend in agriculture and forestry investment will continue to increase in the future for four reasons. They believe that the province has a lot of suitable land for growing rubber, as well as a low population density. PPID staff also note that it is the policy of the provincial government to promote this type of investment. Third, they argue that, compared to sectors like mining and hydropower, it is easier for local officials to cooperate with investors in the agriculture and forestry sector because they understand the resource better and are thus better able to assist investors in finding appropriate land. Lastly, they note that given the existence of government rules limiting the value of the investment partnerships that each level of government can approve, the fact that agriculture and forestry projects tend to have lower capital costs makes it easier for local governments at the provincial and district levels to work directly with these investors without seeking project-by-project approval from national level authorities.

2.1.1. History and Geography of Industrial Tree Plantations in Oudomxai

In the province of Oudomxai, private sector investment in tree plantations is a relatively recent development, beginning with the first such investment in late 2003. As of June 2008, the province had signed investment contracts for the planting about 34,000 hectares of industrial trees, with over 4,600 hectares already planted by nine private sector companies at the time this study was conducted (Table 1 and Figures 1-3).⁵ None of the existing private sector rubber investment projects (seven out of nine

⁵ This is based on 2008 data from the PPID (shown in Table 1). Our PPID interview in August 2007 said 34,000 hectares had been approved for rubber; 10,000 hectares for eucalyptus; and 40 hectares for orchids.

plantation projects are rubber projects) listed in Table 1 have begun tapping operations yet. Figure 1 provides basic details about each project, while figures 2 and 3 plot the relationship between approved project area and investment size. Figure 2 shows the variability in “land approved per amount invested” according to project location (left) and investor origin (right); figure 3 shows the variability in this metric over time.

The PPID’s unit for investment promotion and foreign cooperation has received a number of additional proposals for similar projects, but is waiting to see the outcomes and impacts of the current projects before approving more. The PPID has reported, according to an analysis from the agriculture and forestry sector, that the potential area for industrial plantations in the province could be as much as 84,000 hectares. The government’s strategy is to solve the problem of poverty problem promoting investment. According to our interview with the PAFO, the areas targeted for rubber plantation development is currently claimed by local villagers who are using them for shifting cultivation and other agricultural activities. In accordance with the national development objectives cited above, rubber plantation development will target these areas in order to replace existing shifting cultivation practices.

2.1.2. Investment Procedure

According to the PPID, the investment approval process follows a “one-door” policy, with project approvals prioritized on the basis of benefits to the Lao side. For the steps, the PPID refers to provisions in the Investment Law, while other sectors refer to their relevant laws and regulations (Box 1). Provincial level authorities can, at the time of the study, approve investments up to three million dollars (USD 3,000,000) per project for a maximum period of thirty (30) years.⁶ The PPID also pointed out that under provisions of the Environmental Protection Law, large projects must conduct a Social and Environmental Impact Assessment (SEIA) and an Economic Feasibility Study (*bot*

Table 1. Industrial tree planting in Oudomxai province as of June 2008, listed in order of approval⁷

Approval date	Name of company (activities)	No. on Fig. 1	District	Contract length	Investment (USD)		Hectares approved	Hectares planted
					Domestic	Foreign		
16 Oct 03	Jianfong Rubber Development Co., Ltd.	7	Houn	15 yrs.		1,000,000	6,666	1,895
		8	Beng	30 yrs.		2,000,000	2,000	
22 Aug 05	Siphansalika Rubber Development Co., Ltd.	6	Beng	15 yrs.	1,000,000		2,000	1,034
29 Oct 05	Sino-Lao Rubber Oudomxai Co., Ltd.	4	Xai	30 yrs.		1,000,000	5,000	650
11 Nov 05	New Over Technology (eucalyptus planting)	3	La	40 yrs.	2,000,000		9,500	390
29 Mar 06	Yiu Jiu Pa Rubber, Ltd.	2	Na Mo	30 yrs.		3,000,000	2,500	309
25 Aug 06	Lao-China Sientali Rubber Development, Ltd.	No data	Houn	40 yrs.		2,000,000	2,500	60
18 Sep 06	Jongxai Rubber, Ltd.	5	Xai	30 yrs.		3,000,000	2,000	120
2 Jan 07	Pasom Rubber Enterprise, Ltd.	9	Houn	40 yrs.	150,000		1,300	52
6 July 07	Seu Seung Youn Jing Lao-China, Ltd. (eucalyptus planting)	1	Na Mo	15 yrs.		900,000	502	167
Total					\$3.15 M	\$12.9 M	33,968 ha	4,677 ha

Source: PPID data (June 2008)

⁶ This framework appears to be changing (see, for example, VT 2008d).

⁷ This information in Table 1 is partly consistent, but also partly inconsistent, with the data in the other recent study of rubber planting in Oudomxai province (NAFRI 2007: see especially Tables 2 and 3 on p.7). Referring to conflicts between overall rubber data and company-specific data, the authors of the NAFRI study rightly note that “there are contradictions in the existing rubber data” (p. 39, footnote 9). This finding applies here as well, and suggests the importance of using multiple sources of data wherever possible (Annex 1).

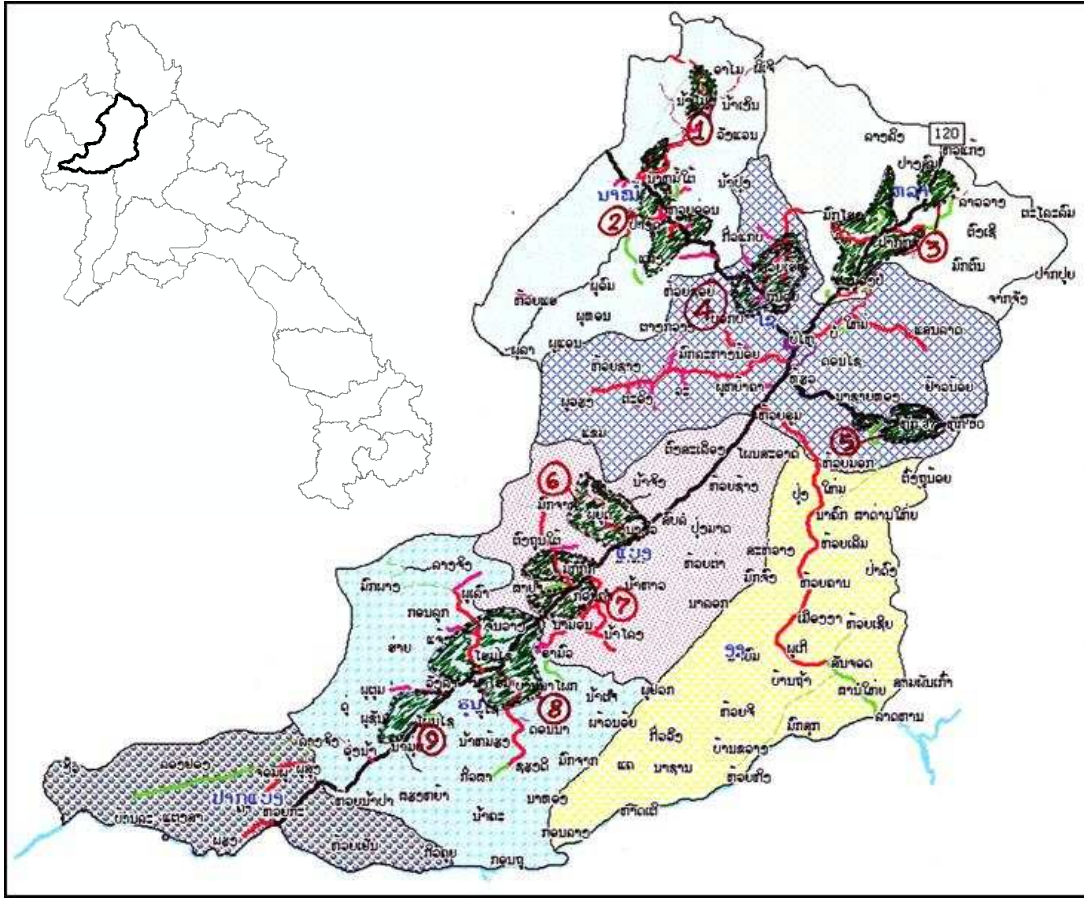


Figure 1. Approximate locations of the tree plantation projects listed in Table 1. Numbered areas are referenced in Table 1. Source: PAFO Planning Office data (June 2008)

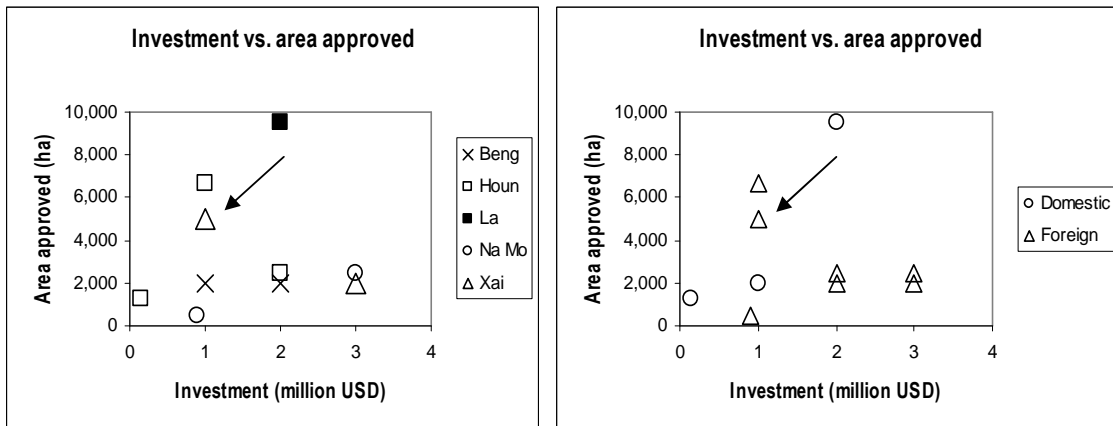


Figure 2. Investment amount versus area approved, shown by district (left) and investor origin (right). The arrows point to the case study presented in section 2.3. Source: Table 1 data

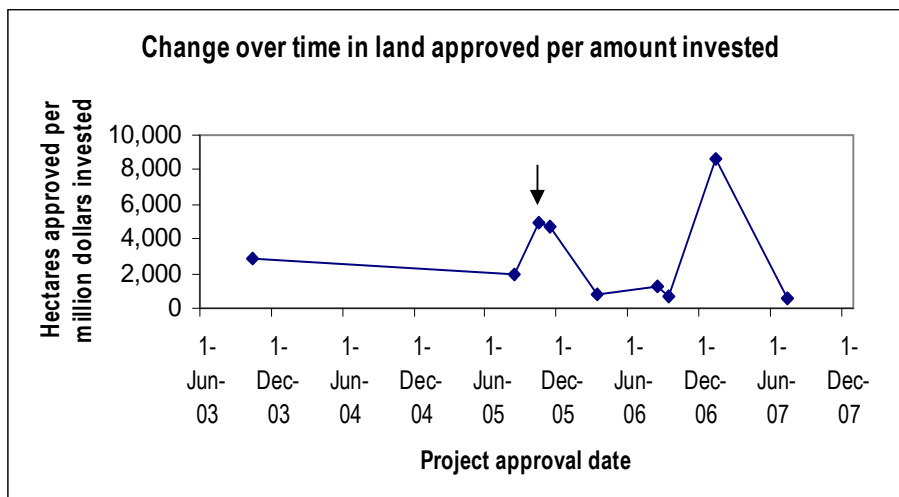


Figure 3. History of the relationship between investment value and hectares approved in Oudomxai rubber projects. The arrow points to the case study presented in section 3.3. Source: Table 1 data

viphak setthakit) before approval of the proposed investment can be granted. Most projects have conducted Economic Feasibility Studies, but there have been no ESIA's carried out for those projects already approved in the province. It was explained to the research team that this is the case because ESIA's are too expensive to conduct, and because the provincial level staff lacked the capacity to conduct such assessments. The PPID did not define what constituted a “large” project requiring an ESIA, but seemed to suggest that the plantation projects they were referring to about would have fallen under the ESIA requirements.

Box 1. Investment procedure

The PPID representative we spoke to explained the investment approval procedure, which he noted should not exceed two months from beginning to end:

1. An interested investor submits a draft investment proposal (*botsaneu khongkan bungton*) to the PPID.
2. PAFO, in collaboration with the investor, conducts a field survey to determine the availability and suitability of the amount land specified in the proposal.
3. The PAFO makes a certification that confirms the land availability according to the survey; they do this with the village and the district in which the land is located.
4. The investor completes the form(s) based on the Lao PDR regulations.
5. The investor submits all of these documents to the PPID, and the PPID makes copies and distributes them to the relevant sectors for their comments and feedback.
6. The PPID organizes a technical meeting (*pasum visakan*) to discuss this project with all of the relevant sectors and representative(s) from the district(s) where the project is proposing to work.
7. If the proposal is acceptable, the PPID issues an Investment Approval Certificate (*bai anunyat kanlongtheun*) to the company.
8. PPID and the investor develop and sign a contract.

2.1.3. Investment Models

The private sector plantation projects in Oudomxai province were all described in our provincial-level interviews as “cooperative” investment projects. According to these interviews (and supported by our case study below), the term “cooperative investment” (*kanlongtheun houam meu*) appears in investment contracts, while two types of cooperative investment – “two-plus-three” (2+3) and “one-plus-four” (1+4) – are shorthand terms that government staff use in order to refer to the two commonly recognized forms of “cooperative” investment.⁸ As mentioned in the Introduction, “two-

⁸ While this is the case in Oudomxai, this should not be taken as nationally representative. We know of at least one case (from Luang Namtha province) in which the terms “2+3” and “1+4” appear in a contract (Dwyer, pers. comm. June 2008).

plus-three” generally refers to projects in which villagers “provide” land and labor, while investors “provide” capital inputs, training and extension services, and a guaranteed market. Our study of the Sino-Lao project, presented below in section 2.3, clarifies what is meant by the “two-plus-three” model. In focusing on how one project is putting the “two-plus-three” model into practice, this report shows what it can actually mean to “provide” land and labor. It was reported by the provincial level government officials we spoke to that most of the plantation projects in Oudomxai are “two-plus-three” projects.

It was also reported that “a few” of the plantation projects in Oudomxai are “one-plus-four” projects, although there was debate among those we spoke to about the projects this actually referred to. (As a result, we have not attempted to label the projects in Table 1 according to any classification scheme.) As it was explained to us, the “one” in one-plus-four refers to villagers’ labor: In this system, companies are responsible for capital inputs, technical advice and markets; villagers are responsible for providing labor (we do not know whether this is wage labor or not); and the local government authority is responsible for providing state land.⁹ As we will see in sections 2.2 and 2.3 below, what constitutes “state land” is important in rubber projects throughout Oudomxai province. The data we collected suggests that the one-plus-four system has been created recently as a result of problems with securing land for the projects and resulting conflicts with local populations when using the two-plus-three system.

In contrast to the use of the “cooperative” investment terminology used by government authorities and project management, the villagers we spoke to referred to rubber projects in Oudomxai as “concessions”. It was not entirely clear whether this is because the concessions model was what the local populations had experienced until recently, or because they (like Shi 2008) view the local variant of cooperative investment as “concession-like”. The new system of cooperative investment was formally recognized on 10 October 2005 at a meeting between representatives from Luang Namtha, Bokeo and Oudomxai provinces (Luang Namtha PG 2005), where, according to a recent study, participants reviewed the negative social impacts of concession and wage-labor based projects and decided to support investment projects that provide inputs to farmers in return for a percentage of the product that will ultimately be produced (NAFRI 2007:39). This meeting is discussed in more detail below in the context of the case study (section 2.3.2). The implementation issues presented below (section 2.1.4) suggest that, despite this shift in approach, villagers continue to view cooperative rubber investment as “concession-like” because they have a divergent understanding of the land property ownership rules from the local government officials and staff responsible for approving and facilitating the development of these private sector rubber investment projects.

2.1.4. Implementation Issues

A number of our interviews support the finding that it has been difficult for the investors to secure the 34,000 hectares proposed for development in the contracts listed in Table 1. Nevertheless, officials and project management remain committed to finding land for these projects.

Provincial and district level interviews gave eight reasons for the difficulty in finding land for companies: unwillingness by farmers to “give their land” to plantation companies, reactive land sales by farmers, occupation of reserved land, differing interpretations of legal land property ownership, overlapping authority over land zoning and allocation between PAFO and PLMA, a lack of zoning maps remaining from earlier LFA processes, problems with investors arranging their capital on time, and a shortage of labor compared to the amount of land that was approved for plantation development. The PPID noted that despite these difficulties, the province still has to continue looking for land for the investment projects that have already been approved, but have encountered difficulties in securing

⁹ As a recent study points out, in Luang Namtha the “one” in one-plus-four refers to villagers providing *land* (Shi 2008:34). In this arrangement, villagers are hired as wage laborers; because companies pay for the labor, companies are said to be “providing” it, whereas in two-plus-three villagers are said to “provide” the labor without being paid wages.

the amounts of land originally envisioned (in the project proposal documents) and agreed upon (in the contracts).

Unwillingness to give land, land sales, and occupation of reserved land

The PPID explained that so far the main problem in finding suitable (*mo som*) land for plantation companies is that the local populations that are currently using the land and claim ownership rights to it do not want to “give their land” for use by private sector business development projects. We discuss further what “giving their land” means in the case study below. While our discussion with the PPID did not obtain much detail, PPID staff said that the problem goes both ways: On one hand, farmer households are not ready (*kuam phom*) for investment. On the other hand, companies do not yet have a good system for dealing with the local groups and individuals. As discussed in more detail in the case study below, one response by farmers who are concerned about having to give up their land property rights to investment projects is to sell their land, either to “outsiders” or to other villagers who believe they are better able to defend the land from plantation projects by planting trees on the land, or using their elite status to argue for compensation, or some combination of the two. Our interviews with PAFO and PLMA staff identified the sale of land by villagers without land titles (*bai ta din*) as a general issue that is not limited to the Sino-Lao project case study. Occupation of reserved land (*kanchapchong din heh wai*) has also complicated the PAFO’s efforts to secure land for the investment projects. While we did not follow up on the relationship between the occupation of reserved lands and the reactive buying and selling of land in areas identified for project implementation, these may be related.¹⁰

Different interpretations of legal land property ownership

According to the PAFO staff we spoke to, the Land Law says that individuals and foreign investors do not have the right to buy and sell land at all because all the land is still under the control of the state, and that in cases where the state wishes to implement a project for a public purpose, the person using the land will have to pass the land use right back to the state.¹¹ Nonetheless, local people believe they have the right to buy and sell land from one another – a difference of opinion (over the legal status of land property ownership) that has resulted in companies not being able to easily secure land for their projects, and in turn creating the need for case-by-case attention to the resulting land disputes. The PLMA staff explained that many people believe that when they have land tax declarations (*bai cheng phasii thi din*) they own the land and can sell it. PLMA staff explained that this is not the case. According to the PLMA, tax certificates do not confer ownership – only titles (*bai ta din*) do.¹² They noted that the villagers’ belief, nonetheless, makes sense in light of the previous system of issuing land use certificates. In this system, the PAFO issued temporary land rights (*kammasit sua khao*) which were then used as a basis for receiving land tax declarations from the local Finance office. The PLMA staff brought this up in the context of law enforcement. They said that different sectors have different interpretations of government policies, and when they find what they believe to be non-compliance, there is no mechanism for enforcement. We did not push them for details.

Overlapping authority

Overlapping authority to conduct zoning and land allocation between PAFO and PLMA was mentioned by both institutions. PLMA staff explained that in the past, land management activities at the provincial level were under the Provincial Land Allocation Committee. This committee was established in 1994 but has not been functioning since 2000. According to the PAFO, the current roles of PAFO and PLMA are not yet clear, and there seems to be some overlap. For example, in the past land allocation was the role of PAFO, but now PLMA believes that to be their role, too. The PLMA is

¹⁰ It is possible that farmers who engage in reactive land sales to outsiders soon discover that the only land then available for them to use for agriculture is the remaining reserved land.

¹¹ This refers to a land use right previously allocated as part of the Land and Forest Allocation program. Whether or not this is an accurate interpretation of the law by PAFO staff was not explored as part of this research paper.

¹² This is a key claim. While it is beyond the scope of this paper to evaluate the legality of this statement, we hope that others who are more informed about the intricacies of Lao property law will discuss this.

also in the process of acquiring/recruiting new staff, and the PAFO is hesitant to cooperate with them because PAFO has most of the available human resources for fieldwork. PAFO is reluctant to contribute their staff until the relative roles of the institutions are made clear – in particular, which institution will take the lead.

PLMA staff explained that although their official responsibilities include managing land statistics, establishing land use zones, doing land use planning, and dealing with land allocation and budgeting, until recently the real provincial-level work related to land surveying and allocation was done by the PAFO in collaboration with the district governors. The PLMA has only recently become involved in the planning and concession process for industrial tree planting.

Lack of zoning maps

In explaining the problems with finding land to implement the contracts for 34,000 hectares, the PPID explained that the province does not have an industrial land use planning map. We did not follow this up for details, but based on the data we collected – that is, based on the maps we *did* find – this seems to refer to two problems. First, there is a shortage of maps that show zoning information at a scale that is detailed enough to actually implement rubber planting. Second, some villagers disagree with rubber survey maps even if these maps are very detailed. We discuss these issues, along with the maps we collected, in the next two sections. Section 2.2 focuses on the zoning maps we created, while villagers' disagreement with zoning maps appears in the case study presented in section 2.3.

Capital management and labor shortages

While these problems were mentioned, our provincial level interviews did not produce sufficient information about them for an in depth analysis. We discuss issues relating to labor shortages in the case study presented below.

2.2. Land Zoning

Because land zoning maps are an important step in finding land for rubber company projects, these maps are relevant to why villagers say they do not want to “give their land” to projects that are doing cooperative investment. As mentioned above, the PPID explained that the province does not have an industrial land use planning map, and the PAFO and PLMA mentioned land zoning as an area in which their responsibilities were not clear. Based on our interviews, provincial and district conservation forest areas seem to be sufficiently well-mapped in order to avoid them when targeting rubber projects, but other land categories are less well-defined. As mentioned above, rubber projects are targeted specifically toward agricultural land in order to decrease the amount of shifting cultivation practiced by farmers. But as suggested above by the difficulties in actually implementing the approved 34,000 hectares, and as elaborated in the case study below, the details of land classification (and the property rights that do or do not come with various land categories) matter a great deal – especially at the village level.

In this section, we focus on the categories and scale of the land zoning maps that we collected. Category refers to the various types of land shown on different zoning maps (e.g., agriculture land, regeneration forest, rubber planting land, etc.); scale refers to the size of the map (e.g., a village versus a district) and the level of detail that is *possible* to show on the map. Resolution – the level of detail that is *actually* shown on the map – is an important issue, too, and we focus on this more in the Sino-Lao project case (section 2.3) and again in the Discussion (section 3). We present three types of land zoning maps. The first is *village* zoning maps produced during the LFA process; the second is *project* zoning maps produced specifically for rubber projects; the third is *district-scale* zoning maps. The categories and scale of these three groups of maps are given in Table 2. Interested readers can see the resolution of various maps by looking at Figures 4, 5 and 6 below, and Annexes 4, 5 and 6.

2.2.1. LFA Village Zoning Maps

We were unable to get detailed information about where the Land and Forest Allocation program was implemented, or where LFA maps still exist. (The maps in Figure 4, which show examples of sign-board and paper LFA maps from Oudomxai province, were provided by another researcher.) PAFO

staff told us a number of things about the LFA process: it was done mostly in villages along roads; it was done by the government from 1993 to 1997; 64 of Oudomxai’s 551 villages had LFA conducted during this initial period; this number had increased to 75 villages as of 2007, due to recent LFAs being connected to specific development projects; and after the initial LFA process, the government had constraints in conducting follow up extension activities, so a lot of local people have encroached into areas previously zoned as forest – especially in the villages that have no development projects. This trend of limited implementation, information storage problems, and minimal follow-up was especially true in Xai district, where we focused our research. The DAFO building in Xai district burned in a fire in 2004, destroying the district government’s collection of LFA maps. The villages we visited – all in Xai district – did not have any LFA maps remaining, either on paper or on village sign boards, although some villagers claimed to remember where the zones had been. In these villages, the only maps that were on display were the rubber plantation project maps.

2.2.2. Project-scale Zoning Maps

We collected project-scale zoning maps in two locations: at the PLMA office and on the side of the road. The two road-side maps are from Xai district (Figure 5 and Annex 4), and are displayed in public areas inside the two projects they represent. Although these maps are painted on large sign boards and posted by the side of the road in the style of earlier LFA maps, they have different category systems and scales (Table 2). There were four rubber project maps at the PLMA. One, from the Sino-Lao project, was made by a PAFO-led survey team in 2004 and is presented as Figure 6 in the next section as part of the Sino-Lao case study. The other three survey maps, presented in Annex 5, are from Beng and Na Mo districts, and were made in 2006 and 2007 by survey teams led by the PLMA (as indicated by the maps’ lists of survey team members). The PLMA survey teams also incorporated PAFO staff (map 1), DAFO staff (map 3), DLMA staff (maps 1 and 3), company staff (map 1), village heads (maps 1, 2 and 3), and other village staff (maps 2 and 3).



Figure 4. Examples of LFA maps from Oudomxai province. Source: Fieldwork photo (left map); Satomi Higashi, Mekong Watch (right map)

Table 2. Categories and scales of three types of zoning maps

Type of zoning map	Land Categories Indicated	Scale	
		Admin. unit	Numeric
LFA Village maps (examples in Figure 4)	<i>All maps observed have:</i> Protection forest (<i>pa pongkan</i>) Conservation forest (<i>pa sa nguan</i>) Agriculture land (<i>din kasikam</i> or <i>pa phalit</i>) <i>Some maps observed have:</i> Utilization forest (<i>pa som xai</i>) Regeneration forest (<i>pa fun fu</i>) Sacred/cemetery forest (<i>pa sa</i> or <i>pa sak sit</i>) Agricultural reserve land (<i>din heh kasikam</i>) Rice paddy (<i>din na</i>) Animal raising area (<i>khet liang sat</i> or <i>pa liang sat</i>) Residential land (<i>din puk sang</i>) Other land (<i>din eun eun</i>)	Individual village	Range between 1:10,000 & 1:30,000
Rubber project maps (Figures 5 & 6)	Protection forest (<i>pa pongkan</i>) Conservation forest (<i>pa sa nguan</i>) Sacred forest (<i>pa sa</i>) Agriculture land (<i>din kasikam</i>) Rubber nursery (<i>suan ka</i>) Rubber planting Area (<i>khet puk yang phala</i>)	4 village areas (<i>khet ban</i>)	1:15,625
(Annex 5)	Mature forest (<i>pa keh</i>) Protection forest (<i>pa pongkan</i>) State-seized land right zone (<i>khet lat thon sit</i>) Villager use area (<i>khet pasason nam sai</i>) Maize garden (<i>suan sai</i>) Paddy rice (<i>na</i>) Rubber nursery (<i>suan ka bia yang</i>)	Parts of 4 villages	1:20,000
(Annex 5)	Mature forest (<i>pa keh</i>) State-seized land use right zone (<i>khet lat thon sit nam sai</i>) Villager use area (<i>khet pasason nam sai</i>)	Single village	1:25,000
(Annex 5)	Protection forest (<i>pa pongkan</i>) Regeneration forest (<i>pa fun fu</i>) Production area (<i>khet tam kan phalit</i>) State-seized land right zone (<i>khet lat thon sit</i>) Villager use area (<i>khet pasason nam sai</i>)	Single village	1:10,000
District-scale zoning maps (Annex 6)	Provincial conservation forest (<i>pa sa nguan khueng</i>) Shrub land (<i>pa fum</i>) Utilization forest (<i>pa som xai</i>) Permanent agriculture (<i>din kasikam khong thi</i>) Protection forest (<i>pa pongkan</i>) Rubber plantation land (<i>din si puk yang phala</i>)	Whole district	1:300,000 (Approx. scale; printed from a computer GIS)
(Annex 6)	Forest areas (<i>pheun thi din pa mai</i>) Protection forest (<i>pa pongkan</i>) Reforestation areas for protecting watershed (<i>pheun thi puk mai pheua pongkan leng nam</i>) Production forest (<i>pa phalit</i>) [Industrial] forest plantation area (<i>pa puk pheua kankha</i>) Provincial conservation forest (<i>pa sa nguan khong khueng</i>) Provincial protection forest (<i>pa pongkan khong khueng kamnot</i>) Agriculture areas (<i>pheun thi din kasikam</i>) Rain fed paddy (<i>na nam fon</i>) Potential areas for paddy expansion (<i>pheun thi sama khanyai na</i>) Pasture or grazing land (<i>thong na liang sat</i>) Cash crop & fruit tree plantation (<i>pheut ai/pheut suan le mai mai tua pai</i>)		

Source: maps in Figures 4-6 and Annexes 5 & 6.

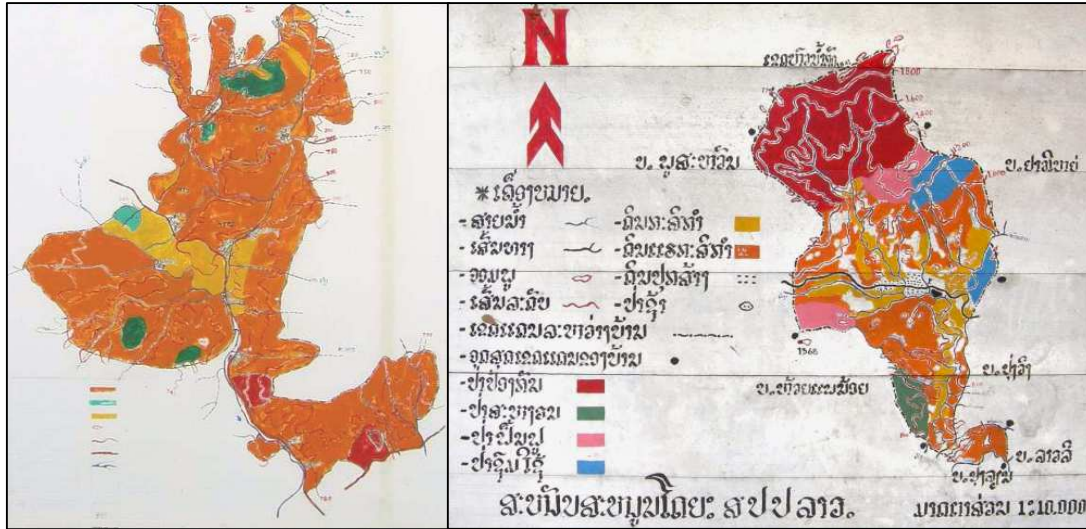


Figure 5. Roadside rubber project maps in Xai district:
Left side: The Sino-Lao project, with 18 villages in 4 zones (*khet*); see Annex 4 for complete sign (note missing legend but see Figure 6 below). Source: Mike Dwyer photo.
Right side: The Jongxai project, with a single village. The map legend shows eight land categories: Protection Forest (red), Conservation Forest (green), Regeneration Forest (pink), Utilization Forest (blue), Agricultural Land (gold), Agricultural Reserve Land (orange), Residential/construction Land (small black dots), and Sacred Forest (black oval with two black dots inside). Source: Mike Dwyer photo.

2.2.3. District-scale Zoning Maps

Because we focused only on Xai district, Xai district was the only district where we collected district-scale zoning information. We received two district-scale maps for Xai district, both from the DAFO. These are shown in Annex 6. Unfortunately, we were unable to confirm the history of these maps, and thus do not know how they were made, and – more importantly – when and how they were circulated among government offices, when and how they were used, or what their legal status is. We do not know if either of these maps had any effect on the planning or implementation of the projects listed in Table 1, although the rough similarity between the less detailed map (Annex 6, map 1) and the area zoned for rubber in the Sino-Lao survey suggests a possible relationship (see Annex 7, lower right map). The more detailed map (Annex 6, map 2) is a “Land use planning and forest zoning map” produced by NAFRI, probably in 2007 (after the Sino-Lao survey); other maps in the same series (not shown here) are “present land use” and “optimum land use.”

The variety of maps presented in this section, coupled with the interview data above, suggests both the difficulty and the importance of the surveying process. In the next section, we use a project case study to examine the transition from surveying to actual rubber planting.

2.3. Project Case Study: Sino-Lao Oudomxai

In this section we present a case study of one rubber project: the Sino-Lao Oudomxai Rubber Company’s project in the northern part of Xai district. The case study consists of background about the project (section, 2.3.1); an examination of how the project has attempted to secure its access to land (section 2.3.2); and finally a more focused look at the effects of the project on land tenure and livelihood in one of the project villages (section 2.3.3).

2.3.1. Project Background

Timeline

The Sino-Lao Oudomxai Rubber Company, Limited (*Bolisat Sino-Lao Yangphala Oudomxai Chamkat*) entered into an agreement with the provincial government for this rubber plantation project in October of 2005 (Annex 2), coming to Oudomxai due to problems finding available land in Luang Namtha province (Shi 2008:25). According to our interviews and the documents listed in Annex 2, the

Sino-Lao project began initial work in Oudomxai in 2004. At this time, an initial meeting between representatives of the company and provincial government representatives established formal cooperation between Sino-Lao and the Oudomxai PAFO Extension Office. The project's land survey, discussed more in the next section, began in late 2004.

The project's other early activities in Oudomxai consisted of writing a proposal for investment, establishing a rubber seedling nursery and demonstration garden, producing an Economic Feasibility Study, writing a first-draft contractual agreement, and drafting the company's internal rules. Prior to actually signing the agreement, however, the project encountered initial difficulties in finding available land. As a result, in late October 2005 the Sino-Lao project changed its arrangement in order to work directly with Xai district officials (instead of with the PAFO Extension Office) – a change that directly followed the project's shift to the “cooperative” investment model. In 2006, Sino-Lao Oudomxai proposed a new project and split the company into two parts – the original company, which works in the northern part of Xai district along the road to Luang Namtha, and a new company: Jongxai Rubber Company (see Table 1 & Figure 5, right side). Jongxai is working in eastern Xai district, in the area of kilometer 32 (*khet lak 32*) along the road between Oudomxai and Luangprabang's Nambak district.

Feasibility Study and Contract Summary

Among other things, the proposal and feasibility study provide a breakdown of the Sino-Lao project investment value (USD 1 million) and proposed project size (although not location), and suggest that the company was requesting assistance from local government authorities in securing land for the project to utilize.¹³ The contract states the project's objectives; names the parties (or “sides”) to the contract; states the investment model and project location; lists the responsibilities of each side; explains production and product-sharing; stipulates policies for labor, management, dispute resolution, contract violation and language/translation issues; and lists the various relevant government offices that will be given a copy of the contract.

The contractual agreement is between the Sino-Lao Oudomxai Rubber Company, Ltd. and the Xai district authorities. It begins by referencing the Foreign Investment Promotion Law (No. 11, 2004), the project's feasibility study and Foreign Investment Approval Certificate, and the provincial governor's approval for the district to sign the contract, granted the day before the contract was signed. The contract states two project objectives: (1) to reduce and work towards completely stopping shifting cultivation; and (2) to provide for local people's involvement in the project in order to involve them in modern farming, to do permanent agriculture, and to alleviate poverty by selling rubber and improving livelihoods one step at a time. The investment is a joint enterprise in accordance with the contract between the Sino-Lao Rubber Oudomxai Company, Ltd. (PRC) and the people of Xai district as represented by the Xai district administration. The value of the investment is USD 1,000,000 (registered capital USD 500,000), and the contract length is 30 years. The contract gives the project area as 5,000 hectares for project operations in four geographic areas (*khet*) – *Khet Ko Noi*, *Khet Phon Hom*, *Khet Homxay* and *Khet Thetsaban* (urban area) – plus 22 hectares for a nursery garden and 100 hectares for a demonstration garden (see also Annex 4).

According to the contract, the government is responsible for setting up a project coordination committee to (1) work with the company at district and village level to facilitate its activities in accordance with Lao laws and regulations; (2) encourage, persuade and educate villagers to be involved in the project, both regarding labor and land for zoning (*chatsan*); (3) address and mediate (*kai kia*) any problems with the local people; (4) manage the zoning of land from the people to the company each year; (5) prepare official land certification documents to confirm company access to

¹³ Due to time constraints, we have not been able to produce a full analysis of the Sino-Lao contract, project proposal, Economic Feasibility Study and Company Rules. A full analysis would require examining the contents of each document, relating them to one another on key issues, and tracing these issues through the history of the project.

land; (6) facilitate the importing of needed tools and labor from abroad; and (7) educate villagers about keeping their large livestock away from the rubber trees.

Company responsibilities include providing the capital inputs and training; planting at least 1,000 hectares of rubber per year; buying all of the rubber produced by the villagers (they can not sell to another buyer); building a rubber processing factory; providing village infrastructure (water supply, school, health clinic, etc.) after tapping begins; and following the Foreign Investment Promotion Law. Both sides together share responsibilities for working together to promote the project among the target population; training people in the techniques of rubber production; cooperating in surveying and zoning the project area; managing the labor of people who will plant; protecting company workers and property; following rules and keeping the project area secure; and conserving nature and taking care of the environment in the project area for years to come.

The contract also says that after planting occurs, the trees will be partitioned (*beng ton yang*) equally between villagers and the company so that each side gets half of the 5,000-hectare total; and that the company has the right to buy the liquid rubber and labor from villagers. Each side will be responsible for paying taxes on its trees. The company will also pay a concession fee of \$3 per hectare for the nursery (22 hectares, to be used until 2012 unless extended by agreement of both sides) and for 60 hectares of the demonstration garden. The other 40 hectares of the demonstration garden will belong to Xai district.

2.3.2. Finding Land

Officials we spoke to explained, on the one hand, that Oudomxai's low population density and abundance of land makes the province a good place for agribusiness investment (section 2.1). On the other hand, they stated that investors' lack of "a good system" for dealing with farmers, coupled with farmers' "un-readiness" to work with investors, were creating serious problems in finding *actual* pieces of land for rubber investment projects. In this section, we begin looking at how Sino-Lao negotiated this paradox – an abundance of available land *in theory* yet a shortage of it *in practice* – by focusing on the survey process and the subsequent emergence of the "cooperative" investment model.

From proposal to survey (late 2004 and/or early 2005)

According to the June 2004 minutes of the first formal meeting between Sino-Lao and the Oudomxai government (Annex 1), all sides agreed that Sino-Lao and the PAFO Extension Office would implement the project together under the authority of the province. In this meeting, the government offered the company the responsibility of selecting a planting area, as well as a number of other things.¹⁴ The meeting also discussed the need to build a nursery, a demonstration garden for training villagers, and instructed the two sides (Sino-Lao and PAFO) to consult with the appropriate district-level authorities in order to find land for the nursery, demonstration garden and office. While it is difficult to be certain, the minutes thus suggest that the district government(s) was (were) supposed to play a bigger role in finding land for the small-area items (the nursery, demonstration garden and office), but less of a role in selecting the main planting area. At that point in time, it is impossible to tell if a single or more than one district is intended because there is no mention of a project location. Similarly, no area numbers are mentioned.

The project proposal is only slightly less vague about area and location, specifying only a 20-hectare nursery. (Most of the proposal is focused on the financial aspects of the project; see summary above). Nonetheless, the proposal does specify that the company is requesting that the state provide land: "the company will provide [inputs and training,] the people will be labor and the state will provide (*sanong*) the land" (Project Proposal section 4.2). The request for other specific amounts of land occurs in the Economic Feasibility Study, the drafting of which also occurred in late 2004. The feasibility study reiterates the proposal's expectation that the state will provide land (Economic Feasibility Study section 2.1). The specifics of the project's physical layout and timing begin to take

¹⁴ These included planning the implementation activities; providing seedlings/varieties (*neophan*); promoting the project; providing technical training; and purchasing, processing and distributing the rubber.

shape in the feasibility study, although still without reference to specific locations. The feasibility study proposes a project area of “5,000 - 10,000 hectares”, plus the demonstration garden (100 hectares), nursery garden (20 hectares) and office and processing factory (two hectares). The plan was to establish the office site, nursery and demonstration garden in 2005, and to plant 1,000 hectares per year beginning in 2006 for a total project area of 5,122 hectares in 2010 (Economic Feasibility Study section 13).

The first record of the project location is the survey map (Figure 6 and Annex 5). Based on our interviews with PAFO and Sino-Lao staff and villagers in the project area, the survey seems to have been done in late 2004 by PAFO, DAFO and Sino-Lao project staff. The survey team went to villages in the project area and, together with members of the villages where the survey happened, looked for land to fill the project quota. In each village, the survey team and villagers wrote and signed a summary of the survey activities and decisions. We were unable to get copies of these notes, although villagers mentioned them as well in the household interviews. The project location – pictured on the survey map in Figure 6 (and Annex 5), pictured and described on the signboard map in Annex 4, and confirmed in the contract – consists of the four adjacent zones (*khet*) listed above. Each zone includes between three and seven villages. Annex 7 shows the rubber survey zone in relation to topography and the district-scale zoning maps discussed in section 2.2.3.

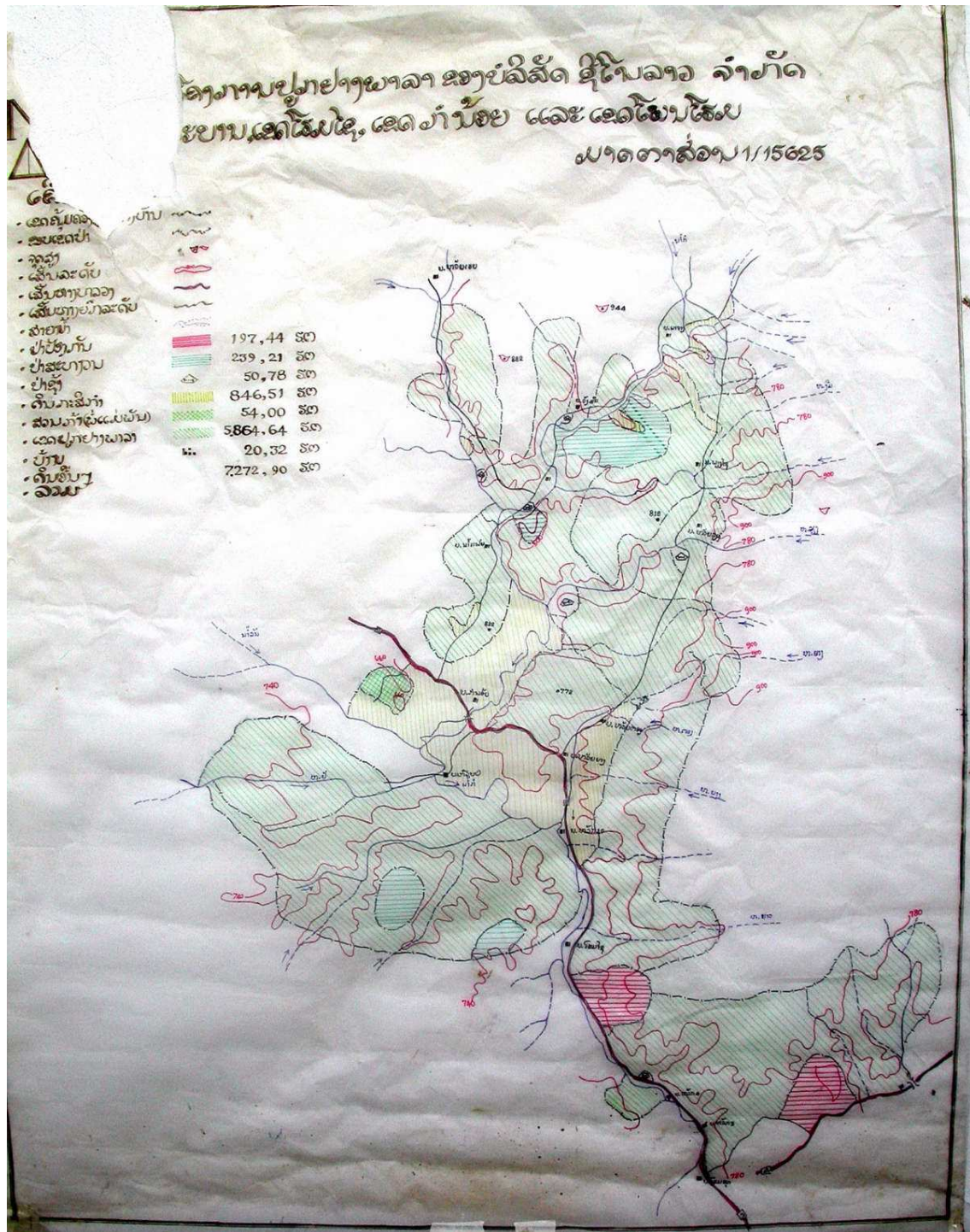


Figure 6. Sino-Lao survey map, 2004. According to the map legend, the six types of land shown on the map are (from top to bottom): Protection Forest (red horizontal lines, 197.44 ha), Conservation Forest (green horizontal lines, 239.21 ha), Sacred Forest (small symbol, no color, 50.78 ha), Agricultural land (yellow vertical lines, 846.51 ha), Rubber Nursery (green diagonal cross-hatching, 54.00 ha), and Rubber Planting Zone (green diagonal lines, 5,864.64 ha). Source: August 2007 fieldwork.

In order to make the survey map shown in Figure 6, PAFO staff explained that they collected LFA data from the villages directly because it was unavailable from the DAFO. (As mentioned above, the Xai DAFO building had burned in May 2004, resulting in the loss of the district’s copies of the LFA maps.) In the village discussed below in section 2.3.3, this meant collecting verbal accounts of where LFA zones were because the village’s copy of the LFA map had disappeared as well. The survey did not try to exactly reproduce the original LFA zones, however, due to the pressure to find land for the project. Rather, the survey process also entailed negotiations with villagers for upland agricultural areas – explicitly targeted by the project – as well as areas that had been previously zoned as forest but whose actual use status was “uncertain”. The team surveyed a total area of 7,272 hectares. Of this, they zoned 5,864 hectares as a rubber planting zone (*khet puk yang phala*) – just over eighty percent (80.5%) of the total survey area (Figure 7).

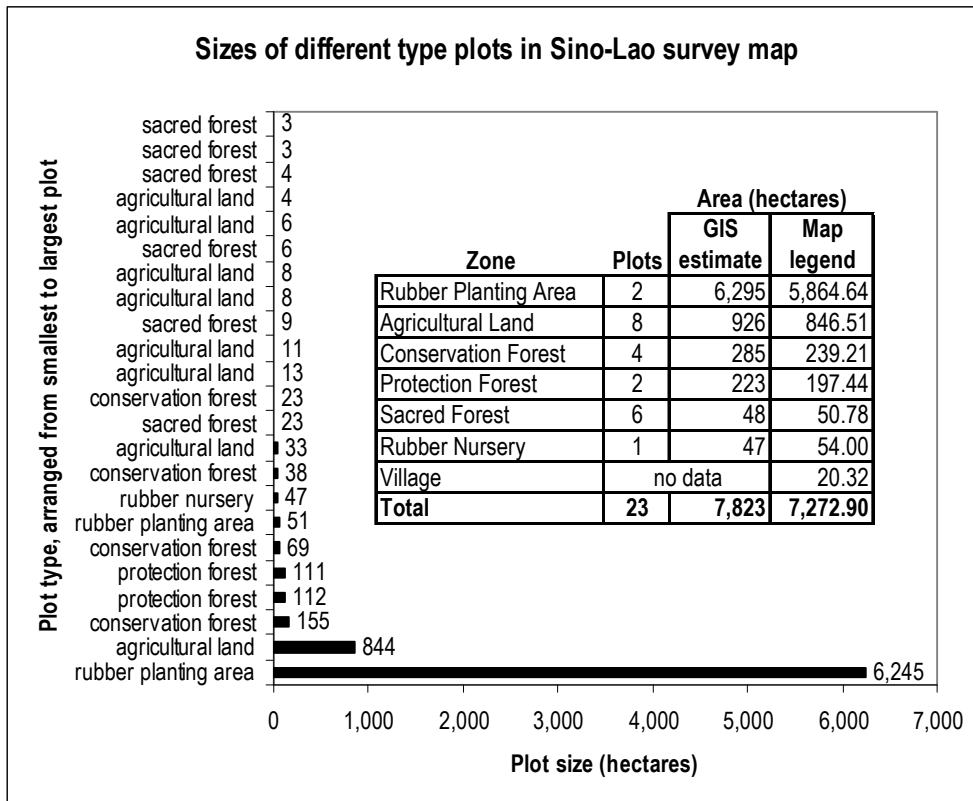


Figure 7. Size and area estimates of Sino-Lao survey map plots (bar graph) and zones (table). In the bar graph, plots are listed by type from smallest (top) to largest (bottom), and area values (in hectares) are shown for each. Plot area estimates were calculated using GIS software. The inset table shows the area of the map zones according to (i) the plot-area estimate from the GIS software (left area column) and (ii) the map legend (right area column). Source: Sino-Lao 2004 survey and GIS area estimate

The formalization of cooperative (or “2+3”) investment (October 2005)

As noted above (section 2.1.3), the “two-plus-three” (2+3) investment model was discussed and agreed upon at a meeting between representatives between Luang Namtha, Oudomxai and Bokeo that took place in Luang Namtha on 10 October 2005. Sino-Lao seems to have played a role in this meeting as well: in the meeting minutes, it is the only company mentioned working in Luang Namtha and Bokeo provinces, and is one of three companies working (and one of two companies with a signed contract) in Oudomxai. The description of the Oudomxai companies gives details for each:

- “Jianfong Company (100% investment, the products of which to be divided 60% to the company and 40% to villagers)

- Densavan Company (100% investment in a state farm [*nikhom*], but presently not yet signed contract)
- Sino-Lao Company (provide seedlings and pay for everything else, people are [providing] labor and land;¹⁵ product sharing 50%)” (Luang Namtha PG 2005).

The minutes also stipulate agreement (*toklong hen dii*) on two things: first, the adoption of the “two-plus-three” model (*houp-bep 2+3*), which is described as: “Investor (3): capital, technique & market; and local people (2): land, labor”; and second, “benefit sharing in which villagers sell rubber (*nam yang*) to the company until the initial investment is repaid, after which time the rubber trees will belong entirely to villagers with the constraint that they sell their rubber only to the company, and in accordance with the market price.”

This description of cooperative investment specifies four features of “standard” contract farming, or what is often called “forward contracting”, with smallholders: (i) the provision of inputs on credit, (ii) the selling of the commodity (in this case liquid rubber [*nam yang*]) back to the investor after the credit has been paid, (iii) a confirmation of smallholder ownership of the productive capital (the rubber trees [*ton yang*] after the original credit has been paid, and (iv) a requirement to sell rubber *only* to the original investor. It is important to note that this description does not make reference to wage labor, the spatial rearrangement of land rights, or investor ownership of rubber trees. Nor do they refer to concessions or the one-plus-four model. Rather, this description suggests that rubber investment is to follow the forward contracting model that is widely used for the production of maize and other annual crops (NAFRI 2006:17 for maize, village interviews for maize and other annual crops).

In contrast, the Sino-Lao contract, signed less than three weeks after this meeting, describes cooperative investment quite differently. In short, it describes a hybrid system based on both concessions and contract farming. Whereas land access is generally not a concern of investors who use only a forward contracting model, Sino-Lao’s access to land plays a central role in the contract. Facilitating the creation of project land occupies most of the section on government responsibilities. Specifically, it commits the provincial government to (i) persuade villagers to use their land in accordance with project plans, (ii) facilitate the zoning activities that create project land each year, (iii) mediate any problems with villagers that arise from this process, and (iv) prepare official documents that support this process. This intention to use zoning (*chatsan*) as a key technical means to create project land is also conveyed in the minutes of a meeting that occurred five days before the contract was signed, and which describes the project as:

an enterprise in accordance with the contract between the Sino-Lao Rubber Company, Limited and both the Xai district authorities and the people of the project’s target villages, in which the company is responsible for capital expenses, technical training, equipment and marketing; and the people assemble (*pakop*) the labor and the land, which the state will zone for them (*chatsan hai*)...The area that will be for rubber planting is for the state to zone and approve in accordance with the scope of power of the district, province and central government. Following, and in accordance with, the zoning exercise done by the district, at least 1,000 hectares will be planted per year (24 October 2005 meeting minutes).

This passage is important because it states explicitly something that is implied in the contract – that legal authority for Sino-Lao’s land access strategy comes from the district’s purported authority to conduct re-zoning activities.¹⁶ Another aspect of Sino-Lao’s land access strategy, explained in our provincial-level interviews (also see section 2.1.4), is the Land Law’s definition of landownership: PAFO, PLMA and Sino-Lao staff explained that even though villagers think they own the land and can sell it, the Land Law defines the ownership of land use rights by referring to land titles (*bai ta din*). They said that because villagers do not have land titles, the state still has the right to take back

¹⁵ Literally: *pasason pen heng-ngan le thi din*

¹⁶ This may be a reference to the Land Law (and to article 10 on the “Rights and Duties of Land Management Authorities” in particular), but this was not stated explicitly. We rely here on the National Assembly Law Committee’s endorsed translation of the current version of the Land Law (No. 04/NA, 21 October 2003).

the use rights offered to villagers under the LFA process. The key point here is that the legal authority for the Sino-Lao project's access to land seems to be based on a claim of the district government's authority to conduct re-zoning and, in the absence of land titles, to revoke LFA-issued land rights without compensation.¹⁷

The hybrid nature of the Sino-Lao project is described in article 6.2 of the contract on utility sharing (*kanbeng phonpanyot*). The first part of this article (6.2.1) describes the demonstration garden and the nursery:

In the 100 hectare demonstration garden, it is agreed to divide 60 hectares to the company and 40 hectares to Xai district. The company will pay a concession fee (*kha sampathan*) of \$3 per year per hectare on the 82 hectares comprising the 60 hectares of the demonstration garden and the 22 hectare nursery.

The second part of the article (6.2.2) stipulates that the company and villagers will each receive fifty percent of the 5,000 hectares of rubber trees, and gives the following details:

- If the trees in the 5,000 hectares die, the company will provide new ones.
- Seedlings will be provided for free to villagers.
- The company agrees to hire Lao farmers from the target villages or elsewhere (in accordance with district policy and project labor requirements) in order to plant and take care of the young rubber trees.
- Once the trees are mature, each side's trees will belong to that respective side.
- Each side is responsible for paying all relevant fees, charges, taxes, etc. on its share of the trees. [This sentence includes the term "concession fee" (*kha sampathan*), suggesting that both sides view Sino-Lao's 2,500 hectares as a concession.¹⁸ Unlike article 6.2.1, no concession rate is given.]
- Villagers will sell their rubber¹⁹ to Sino-Lao for processing in its factory.
- The government will provide the proper documentation in order to facilitate the export of Sino-Lao's rubber.

In sum, *the contract describes a hybrid approach to rubber production that uses wage labor and land division to produce territorially-distinct concession areas and contract farming areas*. This approach uses features of, but also departs from the simplicity of, the forward contracting arrangement outlined in the minutes of the 10 October meeting. Specifically, the Sino-Lao plan relies on *wage labor* initially to develop land into a nursery, a demonstration garden and 5,000 hectares of rubber trees). It then plans to use *land division* (of the demonstration garden and 5,000 hectares) to create parcels that will be owned by the company and the state (in the demonstration garden) and the company and villagers (for the 5,000 hectares). Presumably there will be multiple parcels, especially for the 5,000 hectares of plantation rubber. The contract is not explicit on this point. After land division occurs, the parcels retained by the company (60 hectares in the demonstration garden and 2,500 hectares of productive rubber trees) will be treated as "concessions" along with the 22-hectares nursery. The remaining parcels – the 40 hectares of demonstration garden and 2,500 hectares of villagers' rubber trees – are treated as state land and village land, respectively.

In this plan, the key land categories – "state land", "concession land" and "village land" – are clearly implied, but their meaning is not precisely given. In particular, the provincial government's claim of state authority to conduct zoning and revoke LFA-issued rights make the category of "village land"

¹⁷ It should be understood that under the Land Law and LFA procedural regulations and guidelines, land use certificates issued to farmer households as part of the LFA process should have led to the issuance and registration of land titles by this time (three years after the land use certificates were first issued if the land allocated was put into productive use and land taxes were paid). Since it seems likely (based on the PLMA's description of the situation – see section 2.1.4 – and the fact that Homxay villagers are producing cash crops) that the households involved were paying land taxes, the villagers' claim to landownership is worth taking seriously from a legal perspective (as well as a moral one) against the district or provincial authorities' position that their land can simply be reclaimed without compensation.

¹⁸ Presumably, villagers do not have to pay a similar concession fee.

¹⁹ The contract actually says "rubber trees" (*ton yang*); this appears to be a typo.

problematic and confusing. As noted above (section 2.1.4), the ownership of “village land” is contested, with villagers, on the one hand, exercising their ability to sell land and, on the other hand, the provincial officials invoking state authority to conduct zoning. It is in this context of contested landownership practices that we must read the Sino-Lao contract. The hybrid approach outlined in the contract outlines a plan that, as it is implemented, *creates* “state land”, “concession land” and “village land” as geographically-defined and parallel categories *out of* territory in which these categories – and more importantly the rights of access they imply – are both ambiguously defined and contested. The version of the project area shown in Figure 6 is, in this sense, a picture of what the Sino-Lao project *hoped* to accomplish when it began its activities in late 2004. This survey map shows a scenario in which eighty percent (80%) of the land in the project area was dedicated to Sino-Lao rubber planting (Figure 7) – a scenario that has not, or at least not yet, come to pass. In contrast, project implementation has encountered a number of problems already discussed by provincial and project staff (section 2.1.4). In the next section, we examine how these problems influenced land use and livelihoods in one of Sino-Lao’s project villages.

2.3.3. Land Use, Land Tenure and Livelihoods in Homxay Village

In this section, we use a village-scale case study to examine how the Sino-Lao project has affected land tenure and livelihoods. We focus is Homxay village, located seven kilometers outside the Oudomxai district center on the road to Luang Namtha. Box 2 gives an overview of Homxay’s village history. We identified five types of impact that Sino-Lao has had on Homxay villagers and their livelihoods: First, in accordance with its objectives, Sino-Lao gave Homxay villagers an opportunity for wage work and investment partnership. Nonetheless, this opportunity was unevenly distributed among Homxay residents, and seems to have been fairly limited. Second, because it attempted to gain land access without providing compensation to earlier land users, the project caused a rush of land sales from the poor to local elites. These sales have brought citizens into conflict with the local government authorities over landownership and the right to compensation and, in so doing, exacerbate the distinction between the poor and the elite by creating what looks like a two-tiered system of landownership – one tier for the poor, who cannot get compensation their land when faced with government-supported investment projects; and one tier for the elite, who can. Third, in targeting land that was used for shifting cultivation (another project objective), the project has begun to either displace agriculture to other areas or contributed to a larger trend of livelihood de-agrarianization. Fourth, by re-zoning some protected forest areas as areas for rubber production, the project has *regularized* – although it probably did not *cause* – the breakdown of the zoning system established under the LFA program. Fifth, the project has excluded recently-arrived families, exacerbating rather than alleviating land shortages associated with resettlement. We explain these in more detail sequentially.

Box 2. Homxay village

Homxay village has 104 households, 140-150 families and 930-995 people (423-463 women).²⁰ Most families are Khmu and Lowland Lao ethnicity. Like other villages, Homxay has a village head, deputy leaders, and various groups, including an administration committee, mass organizations (youth, elders and women) and a security group. They also have village volunteers for animal health, the Red Cross, and mother and child health, as well as production groups for livestock, various forms of traditional agricultural, and rubber. Villagers have mobile phones and a generator, but no electricity. Many have permanent houses, the exception being a group of Hmong families who arrived in 2003 and who live in a separate hamlet. A permanent school was built in 2003. The village has good water resources, including three streams and a gravity-fed water system supplied by the Red Cross.

²⁰ These numbers are based on interviews with village authorities in July 2007 and June 2008. Because the 2008 interview referenced an earlier source (the 2006-07 village statistics cited below in Table 4) and the 2007 interview did not, it is impossible to tell if the differences in numbers illustrate a change over time. We thus present them as ranges of numbers. In Table 4 below, we use *families* and *individuals* (rather than households) to compare population change over time because we did not hear a number of households in the 2008 interview.

According to village leaders and elders, Homxay village was established over 100 years ago, but the current settlement has happened mostly since 1968, when the village had only six households due to wartime population dislocation. Settlement increased initially because the village had good land for swidden cultivation. By 1973, the village had 15 households and was called *Nachak* village, named after the hand tractors – the first in the area – that villagers were using to produce paddy rice. In the mid-1970s, a road was built from Boten (on the Chinese border) to Oudomxai, and the village moved across the river to be next to the road. In 1975, a sawmill opened on account of the extensive forest resources and the demand for timber in Thailand. Because of immigration from Beng district, Houn district and Phongsaly province, the population of the village – then called Kilometer 7 village because of its position on the new road with respect to the provincial capital – increased to 30 households by 1978. In accordance with the government policy of village stabilization, villagers began to build permanent houses around this time.

Around 1980, the neighboring settlement was officially designated Kilometer 4 village, also in reference to the provincial capital. In 1984, Kilometer 7 village was selected for land allocation to people who were impacted by the war, including former officers and war heroes. People from many different locations came as part of this program, so the village name was changed to *Homxay* (Victory Congregation) village. In 1986, Homxay village had 68 households. Teak planting began around this time in accordance with government policy, and expanded to include fruit tree production by 1990. In 1989, the sawmill closed after the timber resources were exhausted. Land scarcity first emerged as a problem in the early 1990s, when increasing demand for agricultural land combined with demand for forest products created land conflicts with the neighboring villages. In accordance with national development efforts, health and education activities began in Homxay village during this time as well, although the village did not receive a permanent school until 2003. The village planted a hectare of rubber as a trial in 1997, but it froze, prompting villagers to focus on other cash crops until the arrival of the Sino-Lao project.

Impact 1: An opportunity for wage labor and cooperative investment, but a limited one

In specifying a project design where villagers contributed land and labor while the investor contributed inputs, training and marketing, the Sino-Lao project hoped to build on a tradition of cooperative investment that was well-established among Oudomxai farmers: the forward contracting model described above at the 10 October 2005 meeting (section 2.3.2). In our interview with the Homxay village committee, residents told us that this system is in widespread use for crops like maize, Job's tears and various kinds of beans. This system – in which investors provided seeds on credit, while farmers used their own land, labor and other inputs (e.g., fertilizer and insecticide), and repaid the seed after their harvest – had been in use since trader-investors started coming to the village around 2003 in accordance with earlier government efforts to promote cash cropping.

As suggested in the above account of its hybrid land access strategy, however, the Sino-Lao project was different from earlier cooperative investment projects in at least two ways. First, the project offered villagers access to wage labor.²¹ As noted above (section 2.3.2), the opportunities for wage labor emerged early in the project (clearing and planting) and are expected to continue (weeding and eventually tapping) on the company's portion of the trees. Second, the project's desire for company-owned trees required the reshuffling of land use rights. According to both the company representative and the Homxay village committee, a "use it or lose it" rule applied to existing land rights within the area zoned for the Sino-Lao project. Households could retain their earlier rights to use a given area²² of land only if they chose to participate in tree sharing; if they did not want to participate, they had to give up their use rights. In the next section, we focus on the losses entailed in this reshuffling; first we focus on the opportunities this process created.

Table 3 shows the relationship between "participation" in the project and whether or not participating households had land in the project area (which villagers refer to as the concession area). The data in

²¹ We heard that villagers earn 25,000 Kip per person per day, paid at the end of each day.

²² The creation of "company" and "village" plots suggests that it would be difficult for all households to keep their original *locations*. We did not press for details on this issue.

Table 3 suggest that participation in the Sino-Lao project was fairly common: two thirds (37 of 55) of our sample participated in some way with the project, either in wage labor or in both wage labor and tree sharing. “Tree sharing” here refers to a two step process: the division of project trees into parcels of company trees and villager trees (see above sections 2.3.1 and 2.3.2), and the division of villager trees among participating households. When we conducted our fieldwork, only the first of these had occurred. “Participating in tree sharing” thus means that villagers expected to receive a share of the village trees when they were eventually divided.

Table 3. Homxay village participation in the Sino-Lao project disaggregated by form of participation and by presence or absence of rubber planting on household farmland (hh = households)

	Form of participation		No participation	TOTAL
	Labor	Labor & tree sharing		
Concession on household land	7 hh	5 hh	0 hh	12 hh
No concession on household land	22 hh	3 hh	18 hh	43 hh
TOTAL	29 hh	8 hh	18 hh	55 hh

Source: Household interviews (n=55 hh)

The data in Table 3 also indicate that wage labor was the most common form of participation, at least when participation is measured by household: More than three fourths (29 of 37) of “participating” households participated by working for wages. Households with and without land in the project area did not appear to differ substantially with respect to wage work – 58% (7 of 12 households) for the former compared with 51% (22 of 43 households) for the latter. On the other hand, there is a big difference when it comes to tree sharing: Households were more than three times more likely to participate in tree sharing if they already had land in the project area (5 of 12, or 42%) than if they did not (3 of 25, or 12%). Of the twelve households who had land in the project area, none declined to participate, and almost half (5 of 12) participated in both wage labor and tree sharing; in contrast, 42% (18 of 43) of households without land in the project area declined to participate. Together, these suggest that the form of participation was heavily dependent on whether or not one had land in the project area already.

If these data are both truthful and representative of the entire village, the correlation between tree sharing and earlier farming in the project area could mean two different things, and possibly both. First, it could mean that tree sharing was *potentially desirable but access-limited* for people without land in the original project area. Second, it could mean that tree sharing was *undesirable but was adopted because it was economically coerced*.²³ In fact, there is evidence to support both interpretations. As we see from Table 3, three households which participated in tree sharing did not have land originally in the project area. This suggests that, at least for these households, the project represented a positive opportunity – a chance to become smallholder rubber farmers. But why was this number so small? Was it because others wanted to join, but were prevented from doing so? The land sales discussed further in the next section support this interpretation because they prevented land from being turned over from non-participants who *had* land in the project area to participants who did *not* have land in the project area. Alternatively, was it because no one else wanted to join because they thought the project was a bad opportunity (cf. NAFRI 2007:24-25)? The data in Table 3 support the economic coercion interpretation because if tree sharers had participated that way for positive reasons – for example, because they thought it was a good deal, they were excited about rubber planting, etc. – then we would not expect to see such a difference between prior land use “in” versus “not in” the project area. In other words, if prior land use in the project area were independent of the

²³ Outside of these two possibilities, the only other explanation for this correlation is that households with land in the project area also had *a priori* characteristics that made them more likely to participate – in other words, that the project area was not “randomly distributed” with respect to villagers’ livelihood resources. Our household data, which show the Sino-Lao project area well-distributed across a range of landholdings (Annex 2a) and livelihood status (Annex 2b), suggest that this was not the case.

decision to plant trees, then a roughly equal fraction of villagers who did *not* have land in the project area would have participated in tree sharing. This is not the case.

In the remainder of this section, we focus on the complex relationship between economic opportunity and economic coercion. We first explain the economically coercive nature of the Sino-Lao project for the households who were farming in the project area. We then pose the question of whether economic coercion can nonetheless create an economic opportunity. We know that Sino-Lao created substantial opportunities for wage labor in Homxay village. But only by wrestling with this question can we get a sense of the magnitude of the contract farming opportunity provided by the project.

The “use it or lose it” rule of land use in the project area is economically coercive because the project was not offering compensation – either cash or land-for-land elsewhere – for land used that was zoned into the Sino-Lao project (as described in section 2.3.2). This rule thus gave a strong incentive to participate: not participating meant losing the right to use scarce land that had been earlier allocated through LFA. Land was already scarce in Homxay village, and land had been getting scarcer over time. According to the village committee, land scarcity had emerged in Homxay village over a decade and a half ago, and was largely due to a combination of expanded cash cropping and in-migration from a nearby army camp and from remote upland villages (the most recent of which occurred in 2003).²⁴ According to land use and population data for Homxay village (Table 4), agricultural land (whether measured per household or per person) had decreased by roughly a third in less than a decade.

Table 4. Homxay Village Land Zoning and Population data, 2001 and 2006/07

2001 Data	2006-08 Data
<u>Land zoning</u>	<u>Land zoning (2008)</u>
76.38 ha Conservation Forest	61 ha Conservation Forest
195.75 ha Protection Forest, consisting of: Protection Forest (15.75 ha) Regeneration Forest (159.75 ha) Utilization Forest (20.25 ha)	67 ha Protection Forest
527.87 ha Agricultural Production Area et al. Paddy rice (11.03 ha) Upland rotational swidden (345.02 ha) Garden (29.72 ha) Reserved land et al. (168.10 ha)	672.96 ha Agricultural Production Area Rubber zone (73 ha, of which 22 ha planted already) Utilization Forest (17 ha)
826.00 ha Total	8.04 ha Other
<u>Population</u>	<u>Population (2006-07)</u>
80 families	140-150 families
453 people (224 women)	930 people (463 women)
Agricultural land per <u>family</u> (average): 6.6 ha	Agricultural land per <u>family</u> (average): 4.5 ha
Agricultural land per <u>person</u> (average): 1.2 ha	Agricultural land per <u>person</u> (average): 0.7 ha

Source: DAFO and Homxay village statistics. We present these data without attempting to standardize category arrangements or correct the addition. The 2001 zoning numbers (from a 22 May 2001 DAFO LFA summary report) add up correctly when not grouped, but incorrectly when grouped. The zoning data (from interview with village elders conducted in June 2008) add up to 809 ha but state a total of 826 ha. 2001 population data is from

²⁴ It is possible that biological population growth also contributed to land scarcity, but, in contrast to the reasons given here, this did not emerge in our interviews as a cause for increased scarcity. Conversely, the numbers in Table 4 yield an average annual population growth rate of about ten percent – a number much too big to be due to biological population growth alone.

the DAFO LFA summary report; 2006-07 population data is from a 2006-07 Homxay village summary report, published January 2008. The statistics at the bottom (land per family and per person) are calculated by us.

Can coercively-induced cooperation between tree sharing households and the Sino Lao project nonetheless be an economic opportunity? One reason that coercive development is generally avoided is that households themselves are the best “experts” about whether a particular development scheme is a good opportunity for them or not. This is especially true with crops (like rubber) which take a long time to mature, and thus demand a large investment of labor “up front”. In practice (and in Homxay village), it remains to be seen whether the Sino-Lao project represents an opportunity for households who might not have joined if they had other land use options. This will depend on a variety of factors both within the relevant households (e.g., labor availability and other livelihood options) and within the project – for example, the demand for rubber, and its corresponding farmgate price; the company’s promise to build a processing facility locally; and the effectiveness of government regulation on behalf of citizens. In particular, Sino-Lao’s economic impact depends heavily on whether households decide to abandon their participation in the project because of its coerced nature, or whether they decide – either because they truly believe in the opportunity or because they have high “sunk costs” – to stick it out until rubber production begins.

So far, Sino-Lao’s wage labor and contract farming opportunities in Homxay village have been fairly limited due to the combination of the land sales (discussed more in the next section), which slowed down project implementation, and a dispute among villagers about how to divide up their share of the rubber trees. As of the end of the 2007 wet season, Homxay villagers had planted 22 hectares for the project cumulatively. Shortly before this (during our August 2007 interviews), PLMA staff observed that the actual number of trees received by villagers was still too small for them to “make a living” from (*bo samat het pen asiip dai*). At the time we visited in June 2008, no additional planting had happened because villagers could not agree about how to divide up their share of the rubber trees. While we were there, they were trying to find a solution to this in order to resume planting.

While regrettable, this dispute is not surprising. Even if labor inputs were carefully accounted for and agreed upon (not a trivial matter), there remained the fact the project had made two commitments that conflicted with respect to location and landownership. On the one hand, villagers were told that trees would be divided based on labor inputs, which suggests that *all* original land use rights were to be given up. On the other hand, they were told that only *non-participating* villagers would have to give up their land use rights, suggesting that households that participated would be able to keep their original plots. Reconciling these two commitments may be possible in theory, but is probably quite difficult in practice, especially given the advantages of certain plots over others due to accessibility, soil quality, and so on.

The result of the slowdown due to land sales and the (at least temporary) stoppage due to the tree division dispute resulted in a decrease, at least in the short term, of Sino-Lao’s planned activities in Homxay village. As noted above (Figures 6 and 7), the 2004 survey had proposed over 500 hectares of Sino-Lao rubber in Homxay village. When we conducted our fieldwork in July 2007, we heard from the company representative that the plan was for 200 hectares. We also heard from the village committee that the current Sino-Lao rubber zone was 73 hectares (Table 4). The map we made in July 2008 with Homxay villagers and DAFO staff (Figure 8) is consistent with these more recent numbers.²⁵ On the one hand, this may be a scaling back in Sino-Lao’s goals due to the problems (elaborated further in the next section) they encountered in securing land. On the other hand, this may simply be an instance of the *sequential* zoning activities described above. As noted (sections 2.3.1 and 2.3.2), the contract and minutes from the meeting a few days prior to the contract signing both stipulate that zoning will occur *annually* in order to facilitate the planting of at least 1,000 hectares per year.

²⁵ Because the map in Figure 8 does not specify areas for either the rubber zone or the rubber expansion area, we checked these numbers (from the interview) by geo-referencing the map and estimating the areas of these plots using GIS software.

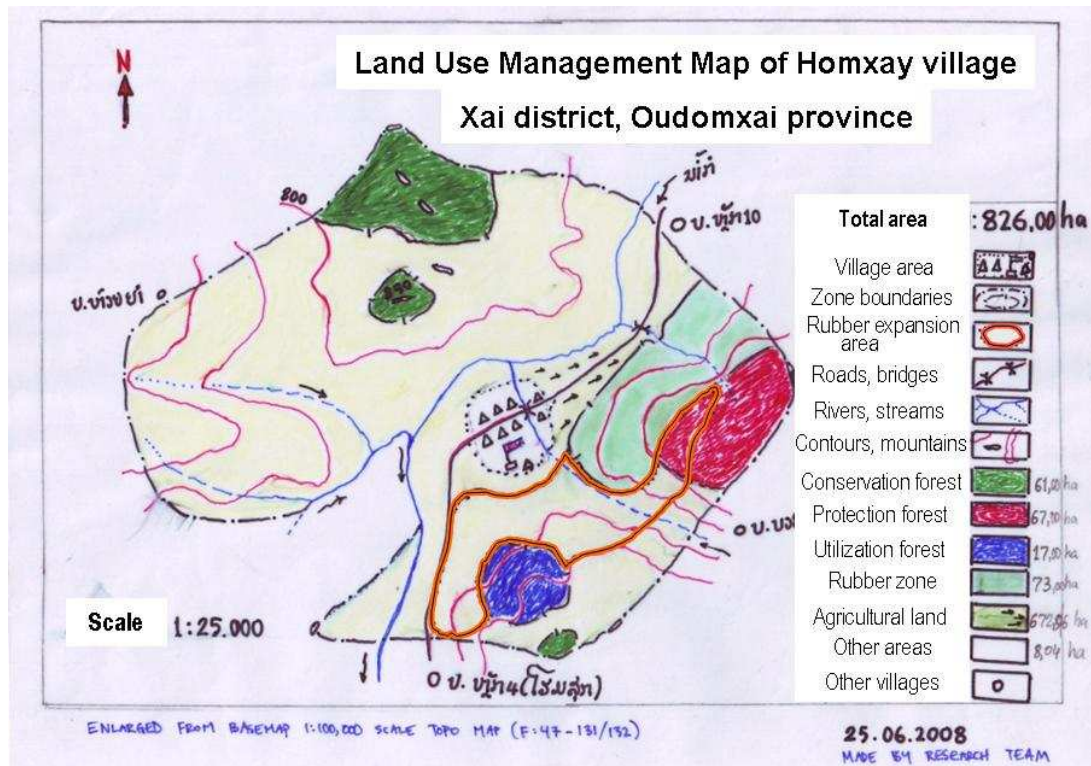


Figure 8. Land use management zones in Homxay village. Annex 8 shows the relationship between this map, local topography, and the district-scale zoning maps discussed in section 2.2.3. Source: Primary data (see Annex 1)

In sum, the Sino-Lao project provided wage labor opportunities, of which about three fourths of Homxay households seem to have taken advantage. It also provided an opportunity for cooperative investment that has been much more limited, and which depended heavily (by a factor of three according to our sample) on whether or not local households were farming in the project area. Just how limited this cooperative opportunity is depends on whether or not the households who were economically coerced into participating decide to stick with it or not. Finally, all of these opportunities have been limited so far by a combination of (i) reactive land sales which slowed down implementation and (ii) a tree division dispute which brought new planting to a halt. The future of these limits is not yet clear: If villages are able to resolve their dispute, rubber planting in Homxay may resume, and may reach a threshold where at least some families can “make a living” from the project’s contract farming component. The current plan is to expand to a total of 200 hectares, but the contract suggests that this may refer to an intermediate, rather than ultimate, goal.

Impact 2: Reactive land sales and their associated property dilemma

When the Sino-Lao project attempted to enforce its zoning rule, it encountered a major difficulty: reactive land sales by villagers who had land in the project area. These sales did not encompass the entire project area, but, according to the project’s representative, they were extensive enough to be a major impediment. The Sino-Lao project representative’s description of the sales – “people want benefit immediately rather than waiting for the investment to pay off” – seems to imply either greed, poverty of some mixture of both. In fact, this is a remarkably astute statement: Some of the “people” he was describing can be described as greedy land speculators, while others can be described as too poor to “wait for the investment to pay off.” But unless we assume that he was talking about his own project, his statement misses a key aspect of the tradeoff between immediate benefit and long-term payoff: the project’s up front costs. By making a legal argument that the land use rights in Sino-Lao project area belong to the state (Box 3, top), Sino-Lao tried to substantially lower a significant up-

front cost for plantation projects: land acquisition. The reactive land sales were a defensive response by some “people” who did not want to grow and maintain rubber²⁶ or to lose their land without compensation, and by other “people” who were willing to risk buying it from them. The land sales were based on a different understanding of landownership (Box 3, bottom).

Box 3. Two contrasting accounts of landownership (emphasis in italics added)

Interview with Sino-Lao (excerpt): “The company considers that *the area in question belonged to the state, not to the people*. They asked people to be involved in planting the trees, and any household which has labor can join. Villagers did not agree to give the land to the company, but the company had already made an agreement with the district, so they have to join. The company had some problems during the project implementation because people who had land in the project area sold it to other people in the village. Mainly people would like to get benefit immediately rather than waiting for the investment to pay off. The understanding of the people is not yet clear, is not yet in accordance with the Land Law. The Land Law states that if you do not have title or certification (*bai ta din*), the land still belongs to the state, and that even if you have Temporary Land Use Certificate, you can not sell the land. However, unofficial land sales have happened anyway. Nonetheless, *it is difficult to compensate people for their land because the land belongs to the state already.*”

Interview with Homxay village committee (excerpt): “Beginning in 2005, Sino-Lao approached the village with district officers to persuade people to plant rubber on the village’s agricultural land. This system is called cooperative rubber investment. In this system, villagers own the land (*pasason pen chaokhong thi din*) – for example shifting cultivation areas – and investors provide the inputs. *The ownership of the trees is 50-50, but landownership remains with villagers.* The procedure for planting is that the district and the company have an agreement in which the district establishes zones (*kanchatsan*) where the company can find land for rubber planting, while the ownership of the land remains with the villagers... Under the district rules, the village committee has the responsibility for managing forest and village land. Villagers are, in theory, supposed to be exposed to the new regulations because there is a sign; they also have a dissemination meeting every year about new regulations. However, the regulations are not well-maintained, and generally disappear after dissemination. In practice, land use is mostly based on tradition, with the village head calling everyone together in the case of problems to mediate. Based on the law and regulations, the district still allows the people to use the land for agriculture but it belongs to the state. Villagers do not have the right to sell it or use it permanently, but they have the right to transfer their temporary use rights to their children as long as the state does not want to use it. *There are different understandings about the right to use land, especially among actual land users.* This is confusing to villagers, and to land management authorities. *The people believe that the uplands (pa phalit) belong to them, and that they have the right to sell this land. This is based on traditional rules of land use and tenure, not the law.* Another problem is land occupation by retired people who claim land on the basis of their participation in the war.”

These differing accounts of landownership capture the essence of the Sino-Lao case study: *The project brought a latent property dispute to life. By forcing the actors involved to put their ideas of landownership into concrete, practical terms, the case shows the difficulty in applying national law to agribusiness investment at the local level.* We believe it would nonetheless be a mistake to adopt the wording of these two accounts and label the first one “legal” and the second one “local” or “traditional”. Both accounts (not only the first one) refer to things that have bases in the law. Second, even though the first account makes a legal argument, it may be incorrect, or may not be the *best* legal interpretation of the situation. Most importantly, there is still widespread debate about how laws should be used in order to resolve the tension between fairness and competitiveness – in this case, fairness to villagers who developed land within the Sino-Lao project area, and competitiveness with respect to other locations (other provinces, other countries perhaps) that have also promised cheap,

²⁶ Rubber cultivation and management is a labor intensive activity, which involves, once the trees start producing raw latex, having to wake well before dawn to tap trees in the early morning hours. This is not an activity that all farmer households in rural Laos would be particularly interested in engaging in, especially if they had already established other farming means for their incomes and livelihoods, such as the planting of perennial fruit trees or other commercial crops on an annual basis.

“available” land to plantation investors. Calling the first argument “legal” and the second one “local” or “traditional” treats the domain of law as more rigid and fixed than it actually is.²⁷ It would also undercut what is both national (e.g., the desire for growth *with equity*) and modern (e.g., the notion that anyone who develops land should be recognized as a landowner) about the second account. Rather, in order to interpret these accounts, we need to understand more about the project land itself. How was it being used prior to being zoned into the Sino-Lao project? Had it been “developed”, and if so what did “land development” mean in practice? What was its relationship to the “subsistence economy” of shifting cultivation targeted for replacement by Sino-Lao and other rubber investment projects?²⁸

According to the Homxay village committee, villagers cultivate upland areas, lowland paddy rice and vegetable gardens. According to 2007 village statistics, they produced 147 tons of rice from paddy and upland areas; 283.2 tons of maize; 7,585 kilograms of Job’s tears; 690 kilograms of sesame; and 15 tons of vegetables. Maize is the biggest source of cash income, yielding 283.2 million Kip – or over \$32,000 using an exchange rate of 8,800 Kip to 1 US dollar. Vegetables, sold at 2,000 Kip per kilogram, earned the village 30 million Kip (about \$3,400), followed by Job’s tears (19.7 million Kip, sold at 2,600 Kip per kilogram) and sesame (4.8 million Kip, sold at 7,000 Kip per kilogram). Maize, Job’s tears and sesame are generally grown on the forward contracting model described above (section 2.3.2). The village head plays an organizing role in this process, negotiating with companies on farmers’ behalf and receiving a small production commission – usually 3,000 Kip per ton sold. Self-investment and informal cooperative investment among relatives (often hard to distinguish) are also common. Homxay villagers use these arrangements of informal credit and cooperation to cultivate maize, rice, cassava, teak, agarwood and even rubber. According to the village committee, Homxay villagers preferred to arrange credit on the basis of their own personal networks rather than depend on a big company (see also Diana 2006).

According to the village committee, more than half of the families in Homxay village produce sufficient rice for household consumption, while 37 percent have enough rice for 7-11 months.²⁹ Less than 10 percent have rice sufficiency for less than 7 months. With the exception of three well-off households and one middle-class household, every household we interviewed practices swidden, or upland, rice cultivation (*hai*). According to our household interviews, poor households have less swidden (*hai*) land than middle-class households – 0.34 hectares per poor household (on average) versus 0.92 hectares per middle household.³⁰ In contrast, agricultural garden plots (*suan*) are kept by almost all households regardless of socioeconomic status, although their size seems to reflect labor availability.

This diversity of market- and subsistence-oriented cropping seems to have first emerged in the early 1990s (1991-1996 according to the village committee), when government cash crop promotion efforts led to the planting of teak and fruit trees. Land scarcity seems to have emerged at this time, too – the first land conflicts with neighboring villages occurred during this period – possibly due to the combination of expanded cash cropping and logging from the nearby sawmill. Following implementation of the Land and Forest Allocation program in Homxay village in 1997, tree crops expanded further to include eucalyptus and other commercial species (e.g., agarwood and the rubber trials mentioned above). In sum, government efforts to promote cash cropping prior to the arrival of Sino-Lao seem to have been more successful than is implied by the rhetoric of shifting cultivation

²⁷ This is due to both the flexibility of legal systems in general and the relatively young nature of the Lao legal system in particular. See Wong (2006); miscellaneous articles in *The Vientiane Times* about the development of Lao PDR’s legal system (e.g., VT 2006c, 2007d, 2008h); and the Program Brief of the Legal Sector Master Plan (UNDP 2007).

²⁸ What follows is a variant of what Andrew Walker (1999:62-63, citing Bowie 1992) calls the “myth of the subsistence economy” – the mistaken belief that subsistence production means an absence of market integration.

²⁹ The precision with which these statistics were reported suggests that they are based on a recent village-wide census – possibly the 2005 national census.

³⁰ Household wealth status is based on the judgment of the village head.

stabilization via the targeting upland agriculture areas. While this account does not tell us if the “uplands” of Homxay village were *full* of cash crops, it does suggest that they were *far from empty*. We heard from villagers that the Sino-Lao project area in particular had been widely used for growing maize, and the above account suggests that other cash crops – including possibly some tree crops – were grown there as well. The fact that at least some plots of land in the Sino-Lao project area were *developed via the planting of cash crops* suggests a motivation for land sales, both for buyers and for sellers: Buyers stood to receive land that was at least partly developed and could be defended as such. And sellers were trying to recoup their labor investments in land (by liquidating them) rather than by simply giving them up without compensation.

But why would some people – people described to us as “elites” (whether local or outsiders) – purchase land inside the Sino-Lao project area if they knew they were simply going to have to give it up? The answer is that they would not. Rather, they were planning one of two things. Either they were planning to be compensated for this land at a price greater than what they paid for it. Or they were planning to try to keep the land and develop it, and they used the threat of expropriation by Sino-Lao to acquire it for a good price. Defensive land sales in the project area, whether they are ultimately considered legal/formal or not, thus point to a second key lesson of the Sino-Lao project: The project created a possibility for land speculation by people who want to take advantage of the belief that some people can get compensation for land while others can not. In other words, despite the insistence of the Sino-Lao representative and the provincial officials mentioned above, someone believed enough in the possibility of compensation that they were willing to purchase land in the project area. This indicates at least a belief (by land buyers) in system of property ownership-in-practice that is based on a distinction between *those who can get compensation for land* and *those who can not*. This is troubling because it indicates that property rights depend on socioeconomic class. This finding is also supported indirectly by interview data from PLMA staff, who told us that there is no clear statement in the regulations (*kotmai*) about how to compensate people if they lose their land to development projects. They said that so far, the practice depends on the negotiations between the authorities and the villagers. This account comes down somewhere in the middle of the two accounts given in Box 3. The existence of land sales suggests that the uncertainty between these three accounts has been exploited, or at least gambled upon, by the “elites” who purchased land in the Sino-Lao project area.³¹

Impact 3: Displacement of agriculture and/or de-agrarianization

Livelihoods in Homxay remain largely agrarian (Box 4), and the Sino-Lao project’s primary impact on Homxay villagers’ livelihoods will almost definitely result from the project’s targeting of upland agricultural land. It is too early to see some impacts – for example, the results of economically-coerced participation discussed above, or the increased exposure to global economic uncertainty. While the effects of the current global economic downturn on longer-term tree crops like rubber are too early to predict, it is likely that the last few years’ predictions of virtually unlimited Chinese demand for rubber were overly optimistic.

Box 4. Examples of five household livelihood situations

Household 28 has five members, and is considered to be better off by the village head. The household has 1.3 hectares of rice paddy, 1 hectare of garden that was allocated during the Land and Forest Allocation process, and 1.2 hectares of rubber garden. The household has land inside the concession, although it was not clear if all 1.2 hectares of the household’s rubber was in the concession. The company and the district staff came to the village. The household attended the meeting, and understood that they can not refuse the concession. The household planted 240 rubber trees, of which they will get to keep half (120 trees), but had to give up some of their land to other people. The household’s main income source is corn, which earned them 3,200,000 Kip this year. Additional income – about 2,000,000 Kip – comes from a small retail shop and from wage labor in the rubber project. A home garden earns an additional 300,000 Kip per year. In the past, the household used to raise

³¹ We have mentioned (e.g., in Box 3) the land claiming that occurred by retirees from the nearby army camp. This likely made the situation even more complicated. We have not focused on this because it did not emerge as a significant issue in our interviews.

livestock, but not any more because the animals died.

Household 6 has four people, and is considered middle class by the village head. The household has 0.3 hectares of rice paddy and 0.2 hectares of upland. Wage labor from construction (about 3,000,000 Kip per year) is the household's main income source; a home garden provides an additional 300,000 Kip per year. The household used to raise livestock, but stopped after they all died. The household has land in the concession – a plot of about 1.5 hectares. The household has lost cultivation land for other things, and, despite getting paid for their labor, feel that working for the company has cost them time.

Household 26 has seven members, and is considered to be middle class by the village head. The household has 0.4 hectares of rice paddy, but uses half of it for corn production. Their main income is from corn (5 tons per year), with additional income from their home vegetable garden. The household has land inside the rubber concession; this happened as a result of being persuaded by the village head to join the project. The landowner (*chaokhong din*) attended a meeting with the village head and representatives from the company and the DAFO. Planting began in 2007. As part of the concession arrangement, the farmer retains possession of the land, but gives up the right to manage it. Rather, the rubber company manages the land, supervising the planting and paying the landowner for planting and taking care of the rubber trees. On another plot, the farmer planted corn, buying the seed himself from the market (LAK 17,000 per 10 kg) and doing a 50 percent labor exchange with another farmer. Production was 5 tons of low quality corn, with some of the plants dying; according to the farmer, this was just enough to buy food and necessities for the household.

Household 35 has six members, and is considered middle class by the village head. The household's income source is its home garden. The household has 1.5 hectares of rubber trees in the concession area. No one from the household attended the meeting with the district about the rubber project. Members of the household have worked for the rubber project. The household is anticipating additional benefits from the project, but has not received any yet.

Household 50 has ten members, and is considered to be poor by the village head. The household has 2 hectares of rice paddy, 2 hectares of corn, and 0.8 hectares of fruit trees. Their main income is from corn production, although they also sometimes sell some rice. They have land in the rubber concession. The DAFO and the company came to the village, but the household did not attend the meeting. The household felt compelled to be involved in the project because if they do not participate, they would lose their land to someone else. The household has sufficient labor and land to be involved, and is anticipating a 50-50 benefit sharing arrangement with the company (details not explained). The household also grew corn as part of a contract farming arrangement with a small investor (a Mr. K). In contrast to the rubber company, Mr. K came to the village by himself to look for farmers to work with.

In the short term, much of the Sino-Lao project's impact in Homxay village will be felt as villagers and the company work out, first, how much rubber to plant in addition to the current 22 hectares, and second, where to plant it and how to deal with any land conflicts that arise. So far, the area of other agriculture displaced seems to have been relatively small when compared to the 200 and 500+ hectare scenarios for Sino-Lao discussed above. But given the existing (and increasing) land scarcity in Homxay village, even the 73 hectares that have been cleared for the project so far (Table 4) constitute a substantial impact. The 200 hectare scenario would impact mostly agricultural land plus a bit of watershed conservation forest (Figure 8 above). The 500+ hectare scenario would displace agriculture first and foremost, but also conservation forest, watershed protection forest and residential space (Figure 9 and Table 5).

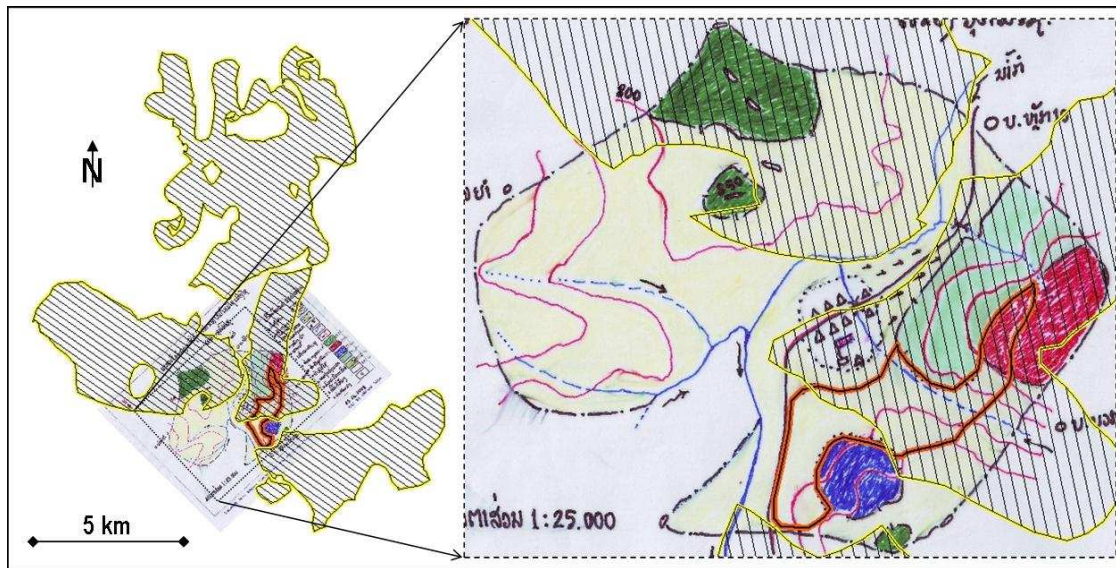


Figure 9. Sino-Lao rubber zone from 2004 survey map overlaid on Homxay village map (with detail). Source: Primary data (Homxay map) and GIS-digitized tracing of 2004 Sino-Lao survey map

Table 5. Estimate of land displaced by Sino-Lao project under the 2004 survey scenario

Original land type	Area
Agricultural production land	405 ha
Conservation forest	68 ha
Protection forest	49 ha
Residential	20 ha
Total	541 ha

Source: 2004 Sino-Lao survey map and 2008 Homxay village map. (Note: This assumes that the 2008 Homxay village map is the same as the lost LFA map from the late 1990s except for the rubber zone, and assumes, based on household interviews, that the rubber zone used to be agricultural production land.)

By targeting upland agricultural land, the Sino-Lao project seems destined to displace not only swidden agriculture, but also some of the cash cropping described above. It also seems likely to contribute to the larger trend of de-agrarianization identified by some scholars (e.g., Rigg 2005). While it is too early to tell the effects of the Sino-Lao project, it is worth pointing out that livelihoods in Homxay village already include a significant proportion of “off-farm” work, including wage labor, trading and salaried work (Figure 10). This off-farm employment is mostly wage labor, and is mostly done by the poor. While it would be an oversimplification to state that the targeting of agricultural land for rubber is “causing” this wage labor, it is almost certain that it is one factor (of many) that lead the poor to seek wage labor elsewhere.

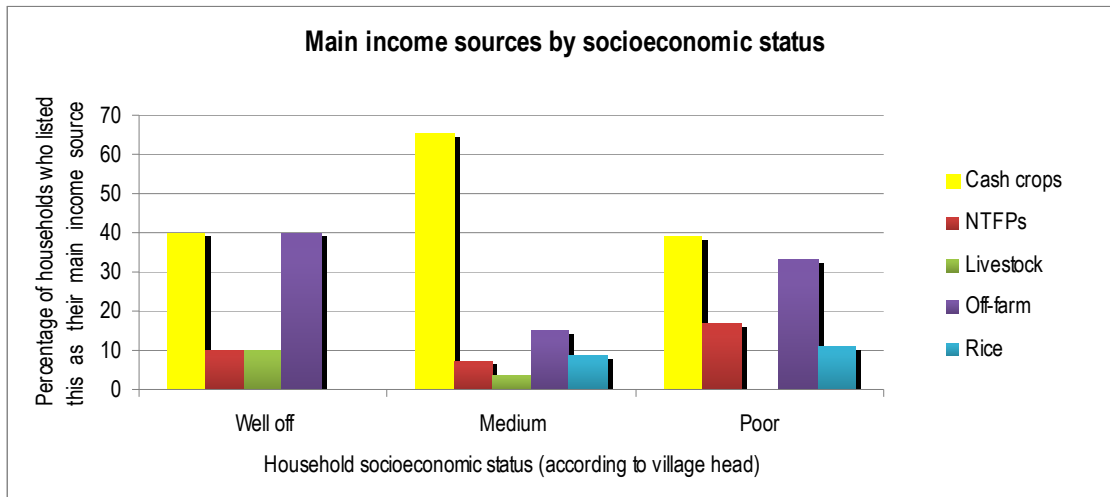


Figure 10. Main sources of household income in Homxay village, disaggregated by socioeconomic status category. Source: Household interviews

4. The regularization of forest zone violations

As explained above, the enforcement and monitoring of Land and Forest Allocation agreements has been relatively weak, both in Oudomxai generally (section 2.2.1) and in Homxay village in particular (Box 3). In Homxai village, the village committee explained that problems with LFA enforcement were the result of land scarcity due to in-migration by resettled families from remote upland villages and land claiming by retired soldiers from a nearby army camp. These causes of deforestation, clearly important in their own right, are separate from the Sino-Lao project. But as shown in Figures 8 and 9, the Sino-Lao project has planned to target areas that were previously classified as protected forest categories (watershed protection forest and [biodiversity] conservation forest). While it is possible that these areas are still forested, it seems equally likely that these are areas that were “negotiated” out of protected status during the Sino-Lao survey efforts (section 2.3.2) because they had already been degraded. Sino-Lao thus seems to have played the role of regularizing these earlier encroachments by rezoning them as rubber planting zones.

5. Exclusion of recently-arrived and vulnerable migrants

Finally, for reasons that we failed to understand completely, a group of 18 Hmong households who arrived in 2003 (see Box 2) were excluded from participating in the Sino-Lao project. The Sino-Lao representative seemed unsure about why these families had not participated, and speculated that perhaps they did not receive information about the project. He noted that the project had nonetheless given them some pigs. The issue of upland resettlement remains a widely debated and controversial topic in Laos, and the details of this case remain unclear: We did not get to discuss the situation with the households in question, although village elders told us that they came “in order to make village development easier.” This may refer to the building of infrastructure (Homxay village received a permanent school in 2003; see Box 2), which has often been used as a way to convince villagers to relocate, whether voluntarily or not (Baird & Shoemaker 2007). The important point concerns the relationship between land scarcity, resettlement and rubber development. The village committee speculated that this group of families might leave the village soon because they did not have adequate agricultural land. Even if the whole story is unclear, this suggests that the Sino-Lao project has failed to address the longstanding problem that recently-arrived migrants are among the most vulnerable to land shortages (Evrard & Goudineau 2004), and may even be exacerbating the problem.

3. Conclusion and Recommendations

The issues documented in this report are fundamentally important to ongoing government efforts to make the capitalization of land a socially beneficial process – that is, to pursue “growth with equity” (GoL 2004). In the context of NLMA efforts to expand the land certification process to rural areas (VT 2008a, 2009c), efforts by MAF to adjust and restart government-sponsored LFA efforts, and MPI efforts to better understand province-level and district-level investment activities (Voladet 2009) amid further decentralization of the investment process (VT 2008d), the issues described here are timely and relevant.

At the provincial level, we have tried to show some of the challenges that provincial officials face as they use their understandings of investment policy and law to negotiate the issues that confront them, which include mismatches between commitments to investors and farmers’ willingness to involve themselves in ‘cooperative’ investment; a shortage of staff who can carry out social and environmental impact assessment; and a regulatory landscape that, as the PLMA gains more of a role in the investment process, produces new questions about governmental rights and responsibilities. More fundamentally, though, even with various sources of confusion about the investment process, this much is clear: rubber investment is deliberately targeting upland agricultural land in the name of shifting cultivation stabilization; as this happens, rubber investment is producing a backlash from farmers who do not want to see their land – some of which has already been converted to cash cropping – ‘given away’ to investors as ‘concessions’. Much of the confusion about the meaning of the models of ‘cooperative’ investment (two-plus-three and one-plus-four) stem from this basic conflict.

In examining the zoning process, our objective was to put some specific details on a process that is often discussed in overly general terms: surveying. Specifically, we showed how three types of landscape classification – Land and Forest Allocation, investment project-specific surveying, and district-level zoning – have produced pictures of the upland landscape that differ by scale, spatial resolution (detail), category system, and legal status. We focused on surveying as a key bridge between provincial-level policy and our single case study because it is the process through which land categories used in policy debates (e.g., agricultural land) get put into practice in geographically specific ways. While the provincial-level complaint that Oudomxai lacks an industrial land use map is true, our results show that this incompleteness in zoning information is not due to an absence of mapping, but a difficulty in integrating the mapping that has been done. This has in turn produced situations where, as happened in the Sino-Lao project, investor-specific surveys begin with little or no previously existing zoning information. At least in the Sino-Lao project, this meant doing a new survey – a process that produced first suspicion and then defensive land sales.

In looking at a single-project case study, we tried to present evidence about how each side – the Sino-Lao project on one side, the farmers who did not want to participate in the project on the other side – have tried to reinforce their own beliefs about land tenure in the project area. Government and company staff have used the zoning process to reinforce the state claim to land rights, and farmers have used the mechanism of land selling to express their belief that the land belongs to them. These opposing strategies – re-zoning and land selling – highlight the different interests that are at stake with respect to untitled rural land, and the different understandings of land tenure that accompany these interests. The conflict between project-specific zoning and “informal” land sales also points to the difficult choices faced by people who are caught in the middle – people like farmers who participate in the project, and government staff who are sympathetic to farmers’ land tenure claims.

It is possible that some of the difficulties documented above can be resolved by improvements in communication between farmers and investors, between investors and local officials, and between different levels of government. Farmer-investor communication may ultimately lead to truly participatory approaches that explain the project in complete detail to farmers from the very beginning and give them a voice in project design; unless they clearly understand the project, villagers will not

commit themselves to it. Moreover, better communication – both between investors and officials and between officials at different levels of government – may be able to help alleviate or prevent the types of land conflict that occurred in the Sino-Lao project. On the other hand, better communication will not solve every problem. On the other hand, better communication will not solve every problem. The Sino-Lao project has highlighted two key economic issues where there is, and where there will remain, a tradeoff between companies and farmers: benefit sharing agreements between companies and participating farmers, and land access between companies and non-participating farmers. In both of these areas, the government has a key role to play in maintaining a fair and appropriate balance. As problems with rural agribusiness investments – and with rubber projects in particular – have become more widespread, the need for better surveying has been widely acknowledged (VT 2007b, 2007c, 2007e, 2008c, 2008f, 2008i, 2008j, 2009a, 2009b). This report shows just how important it is to make sure that “better” surveying focuses not simply on biophysical suitability, but on social suitability as well.

Finally, three of the lessons from this study translate directly into recommendations for further action. These recommendations apply to future research, but also to regulatory and other development efforts that work at the nexus of investment and development, especially in upland areas.

First, *work to enhance the transparency of foreign investment*. It would have been impossible to conduct this research without the cooperation of provincial and district officials, who provided us with access to Sino-Lao staff, village residents and project documents, and who took the time to talk to us candidly about the challenges they face. In our case, reconstructing the legal logic of the Sino-Lao project relied on a combination of interviews, the main contract and meeting minutes. Whether or not this logic stands up to scrutiny is beyond the scope of this report, but without a high level of transparency, this logic would not have come to light and the project would likely have been classified as yet another project with “implementation problems.” Transparency helped to shed light on the conflicts that emerged from efforts to implement the project plan, and has the potential to help push the conversation forward.

Second, *listen to farmers and take what they say seriously*. Beginning in 2005, and especially since 2007, there has been a lot of interest in the “cooperative” (or “two-plus-three”) policy model from law-makers, journalists, and development professionals. One key group that has not been as well represented in the conversation about alternatives to concession-based development is farmers (see NAFRI 2007 for an exception). The title of this report asks a question – “concession or cooperation?” – which emerged from our conversations with farmers who, despite living in the middle of a “two-plus-three” project, continued to call it a concession because of the economically coercive conditions that governed their ability to participate or opt out of it. Taking seriously farmers’ understandings of landownership and local power relations in the case study village, as well as their accounts of the history of cash-cropping and in-migration, was essential to understanding the mechanics of how the land conflict unfolded as Sino Lao attempted to bring land into the project, and why these efforts were viewed as a concession.

Third, *look beyond specific crops and projects to the larger context of development options*. The conflict in the Sino-Lao case emerged from differing representations of the pre-project (“baseline”) conditions in upland areas: The project portrayed these areas as un-developed areas of subsistence-only farming, while villagers described them as areas where they had been growing cash crops for years, in some cases following a contract farming model much like the one promoted as “2+3” elsewhere (although not in the Sino-Lao project which, as described above, used a tree-sharing model to operationalize the “2+3” approach). This raises the question of development options more generally, both in regard to subsistence production and regarding other livelihood options. Is contract farming a *good* livelihood option, or is it simply *better* than concession-based rubber? In short, the Sino-Lao case points to the need to widen the discussion of rural residents’ development options beyond this or that particular project, crop, or even tenure or cooperation system. As indicated above, we hope that this discussion will be based on principles of transparency and inclusiveness.

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- . 2008f. Land authority pledges to preserve farmland. 14 January.
- . 2008g. Champassak villagers hope rubber will ease their poverty. 21 May.

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- 2008j. Govt seeks consensus on land concessions. 9 September.
- 2009a. PM urges clearer agricultural policy. 30 March.
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Annex 1: Methodology

A.1. Origins of the Research and Site Selection

This research emerged out of a workshop that RECOFTC organized with stakeholders from NUoL on pro-poor markets and trade development as part of the Rights and Resources Initiative in July of 2006, and follow up meetings held between members of the Faculty of Forestry and Robert Oberndorf, J.D. held in Vientiane in September and November of that year. On the basis of these discussions, it was agreed between the parties that research on the impacts of private sector agricultural and forest land lease and concession agreement developments on rural communities in the Lao PDR, with a particular focus on the development of rubber tree plantations, would be useful to better inform government decision makers about managing these impacts in the future. Following agreement on the focus of the research to be conducted, efforts were made to formalize a detailed research proposal agreement between NUoL's Faculty of Forestry and RECOFTC in late 2006 and early 2007.

Research began in May 2007, with site selection for the fieldwork and questionnaire design completed in June 2007. We chose Oudomxai because of the balance between proximity to China (likelihood of land concessions) and Vientiane (ease of access), and because of the prevalence of upland areas, the swidden agriculture landscapes being targeted for conversion to rubber. During June, we conducted telephone conversations with the Oudomxai PAFO in order to determine the precise location for fieldwork. Criteria for research villages were (i) easy accessibility by road from the provincial capital, (ii) a history of Land and Forest Allocation, and (iii) the presence of a concession or investment project in the agribusiness sector. Based on these criteria, the PAFO suggested Homxay village, located in Xai district, seven kilometers from the provincial capital on Route 13.

A.2. Research Methods and Timeline

Data collection occurred during three periods, all in Oudomxai: a two-month period of initial fieldwork in July and August 2007; a one-day presentation of initial findings to provincial officials in December 2007; and a five-day follow-up fieldwork visit in June 2008. We interviewed Homxay villagers in July and government and company staff in the provincial capital of Oudomxai in August. In Homxay village, we used group interviews – with the village head (*naiban*), representatives of the village elders (*neohom*), Lao Women's Union (*sahaphan meenyang*), village security group (*konglon ban*), and the heads of the village administrative units (*huana noui*) – to get general information about the history of the village and an overview of land allocation and concessions. We conducted 55 household interviews to better understand access to land, involvement with the rubber project, and general livelihoods at the household scale. We also visited two other villages in the rubber project area. There we conducted short group interviews with village authorities to cross-check and confirm the information about the rubber project that we received in the Homxay group interviews. After the village interviews, we conducted office-visit interviews with the PAFO, PLMA and PPID, with rubber company staff, and with GAA, an NGO working in Xai district.

After initial data analysis, we conducted a one-day workshop at the provincial level with over twenty participants. This meeting (in December 2007) included representatives from the PAFO, PLMA, PPID, PCTPC and GAA. This meeting, combined with the process of writing the first draft, inspired us to try to better understand two things: the spatial relationship between the original LFA land use zoning efforts and the zoning efforts conducted by the rubber project in Homxay village; and the differences or similarities between our case studies and other plantation projects in Oudomxai province. Our final period of data collection – conducted during one week in June 2008 – consisted of a few additional provincial level interviews and the creation of the Homxay village map shown below. The latter involved assistance from one member of the Xai DAFO and six villagers. Mike Dwyer was brought on in late 2007 to help edit the first draft, and to help analyze the June 2008 data.

A.3. Analytic Methods

We use a combination of qualitative, quantitative and geographic data analysis in this report. As much as possible, we looked for multiple sources of data – interviews and documents mostly, with a few

personal observations as well – in order to cross-check data from individual sources. In making arguments in this report, we have tried to be clear about where different pieces of evidence come from. While this may seem tedious at some points (for example, when dealing with multiple sources of interview evidence), it is important nonetheless because (i) it helps to both show and explain disagreements about the meanings of key terms like “concession” and “landownership”; and (ii) it will help future readers compare our results and analysis to other studies. Field research is always difficult, especially when dealing with economic issues like land and investment. We have tried to present our data and results as transparently as possible with the hope that doing this will help inform and improve not only future development efforts, but future research efforts as well (including our own).

A.4. Use of key terms

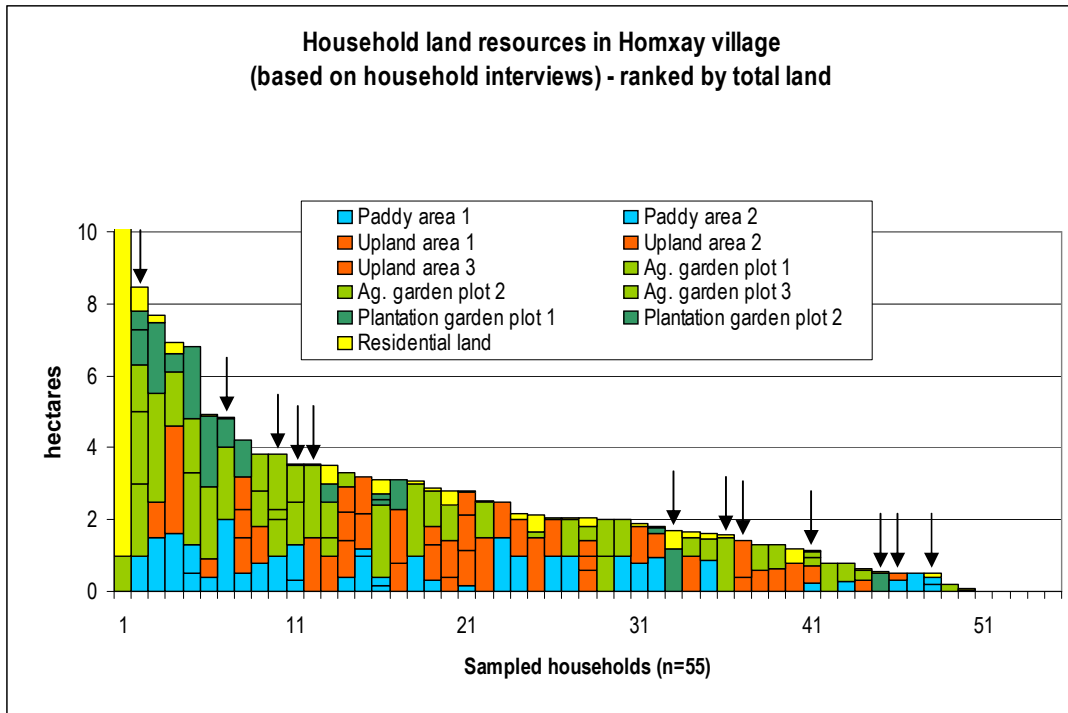
Because of debates about key words like “concession” and “land owner” (see previous section), our use of these terms is not always consistent. While this can be confusing, we have chosen to do this deliberately rather than impose an artificial consistency on the data, as doing so would lead to even greater confusion. For example, on the one hand, Homxay village was selected for us as a research site because we were looking for a “concession” project, and villagers who live there refer to the project we were studying as a rubber “concession.” On the other hand, the project’s contract documents and company representatives maintain that the project operations in Homxay village is not a concession, but a cooperative investment endeavor. This apparent confusion is the result of two possible meanings of the term concession (*samphan*) – a broad use of the term meaning “something given to an investor” and a narrower legal use meaning “land rented to an investor” (Dwyer 2007:2). Imposing a single definition on the term “concession” would therefore erase an important ambiguity that exists “on the ground”, where villagers feel that their land is being given to an investor even though it has not been *rented* as a concession in the legal sense. (We explain this in detail in sections 3.1.4 and 3.3.1.) Similarly, the question of who owns the land inside rubber project areas is the subject of different interpretations; we thus refer to the same areas as “villagers’ land” and “state land” when describing these different positions, respectively. The point is that rather than imposing an artificial consistency in the definition of key words, we have tried to make clear the relationship between *how* key words are being used and *who* is using them in particular contexts.

Annex 2: List of documents in the October 2005 Sino-Lao contract

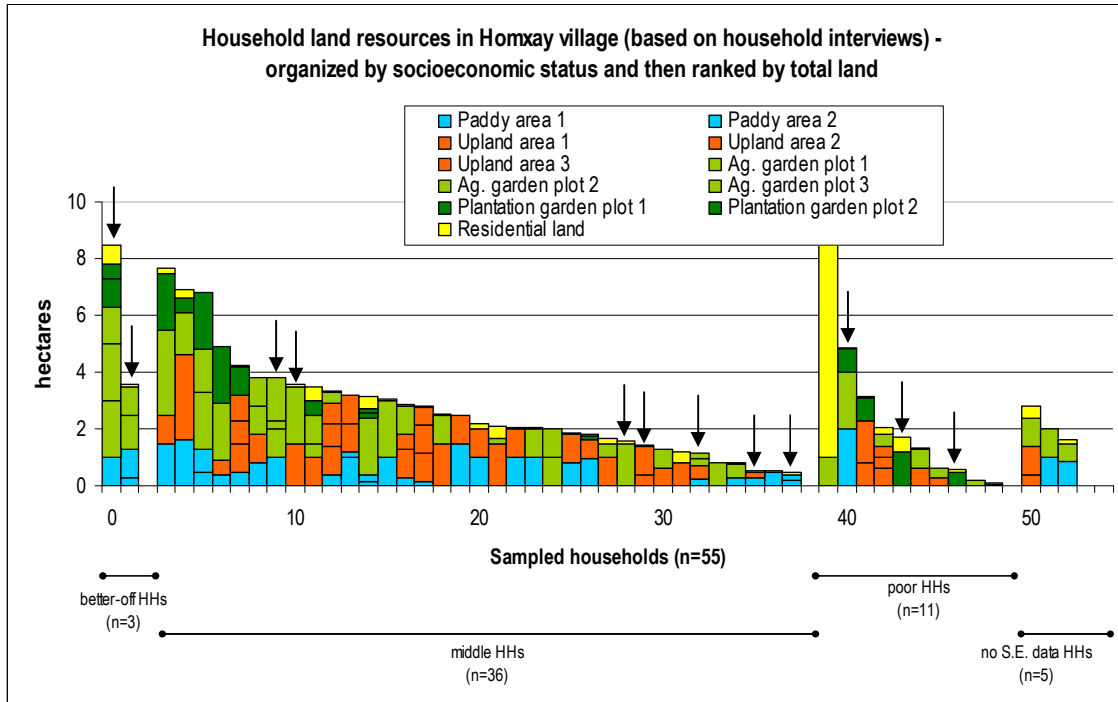
Sino-Lao contract courtesy of the Oudomxai Provincial Planning & Investment Department

- 1) Project map (no date, but based on the 2004 survey map)
- 2) Contract (7 pages, signed 29 October 2005)
- 3) Attached documents (arranged here in chronological order)
 - a. Minutes of the discussion meeting about cooperative rubber planting on 26 June 2004, issued by the Provincial Agriculture and Forestry Office (4 pages)
 - b. Document of the Yunnan Province Commerce Department on Economic Trade [of] Yunnan Province No. 91/2005 – document creating or approving the creation of the Sino-Lao Rubber Company, Ltd. from three companies (YNPC of Yunnan, FTEX of Sipsongphanna & BGRU of Beijing) and an investor (Mr. ____ of Yunnan) (20 July 2005, 1 page)
 - c. Minutes of the discussion meeting between the Sino-Lao Oudomxai Rubber Company, Ltd. and the Xai district high officials on 24 October 2005, issued by the Xai district administration (4 pages)
 - d. Proposal for foreign investment from the directors of the Sino-Lao Oudomxai Rubber Company, Ltd. to the directors of the Committee for the Management of Foreign and Domestic Investment and Cooperation (26 October 2005, 7 pages)
 - e. Economic Feasibility Study (*bot viphak setthakit*) by the directors of the Sino-Lao Oudomxai Rubber Company, Ltd. (26 October 2005, 8 pages)
 - f. Internal rules of the Sino-Lao Oudomxai Rubber Company, Ltd. by the directors of the Sino-Lao Oudomxai Rubber Company, Ltd. (26 October 2005, 9 pages)
 - g. Meeting minutes of conference for considering the request by the Sino-Lao Rubber Company of Oudomxai, Ltd. for a rubber planting investment project (27 October 2005, 2 pages)
 - h. Proposal to the Oudomxai Provincial Governor from the Xai District Governor to request a Foreign Investment Approval Certificate from the Oudomxai Provincial Committee for Domestic and Foreign Investment for the Sino-Lao Rubber Company, Ltd., requesting agreement for approving the giving of land (*khotoklong va doi anunyat neua thii din hai bolisat...*) to the Sino-Lao Rubber Company, Ltd. for planting rubber in cooperation with [local] people (*pasason*), and requesting that the right be given to the Xai District Governor to sign a contract with the Sino-Lao Rubber Company, Ltd. (No. 034/DG, 28 October 2005, 1 page)
 - i. Agreement of Oudomxai Provincial Governor to cancel the establishment of cooperation between the Agricultural and Forestry Extension office (Oudomxai Provincial Agriculture and Forestry Office) and Sino-Lao Rubber Company (No. 682/PG, 28 October 2005, 1 page)
 - j. Agreement of Xai District Governor to nominate a coordinating committee for cooperating with the Sino-Lao Rubber Company, Ltd. for planting rubber in Xai district (No. 035/DG, 28 October 2005, 1 page) [Note: the committee included the Homxay Area Head [*hua na phak khet Homxay*], but not the village head [*naiban*]; the area heads are based in the district center in the district administration office]
 - k. Foreign Investment Approval Certificate, issued by Oudomxai Provincial Committee for Domestic and Foreign Investment (No. 683/OPCDFI, 29 October 2005, 1 page)
 - l. Agreement of Oudomxai Provincial Governor offering the right to sign a contract with Sino-Lao Rubber Company, Limited, to the Xai District Governor (No. 604/PG, 29 October 2005, 1 page)
 - m. Bank and tax summaries for YNPC, BGRU & FTEX with various dates written on them but no obvious dates of issue (No date, 6 pages)
 - n. Miscellaneous Chinese language documents (No date, 13 pages)

Annex 3: Household land resources and the Sino-Lao project area

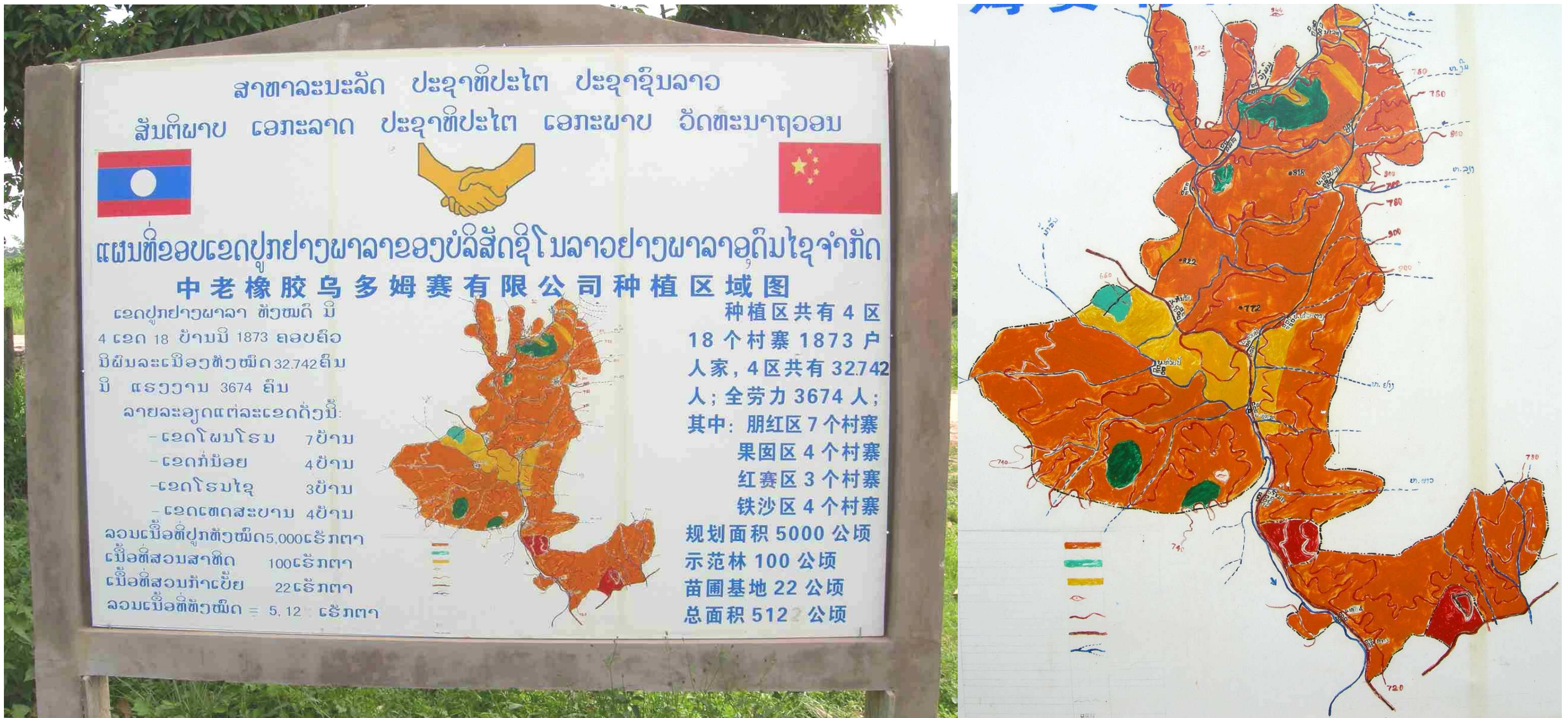


A. Landholdings by type and concession impacts, ranked by total declared landholdings. Households marked with an arrow answered "Yes" to the question, "Does your land contain a concession?" Data source: household interviews. Note: The left-most column (a household with over ten hectares of residential land) probably represents an error in data recording or data entry. Source: Household interviews



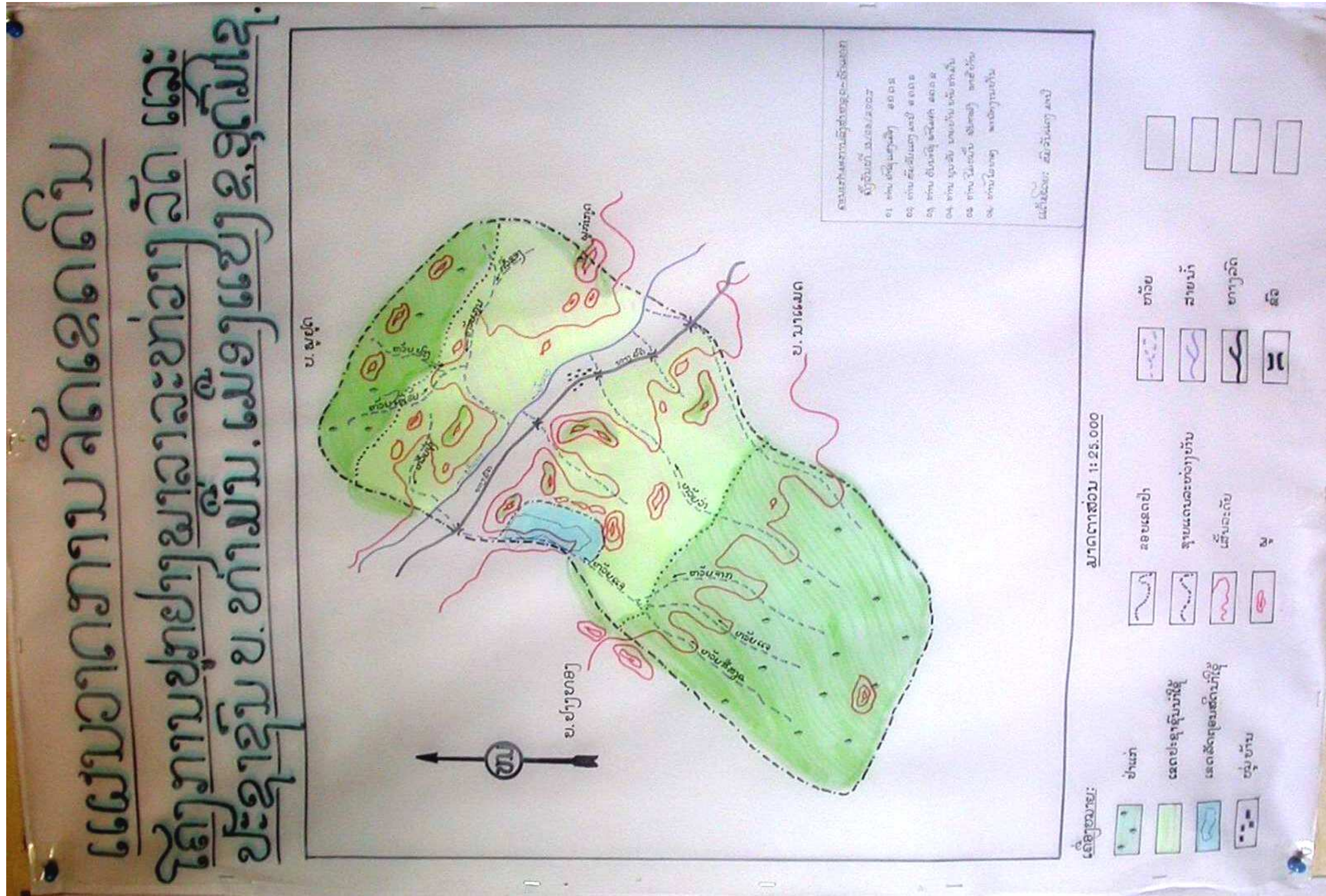
B. Landholdings by type and concession impacts ranked according to village head’s opinion of household socioeconomic status. Households are separated by socioeconomic status (according to the village head) and then ranked according to declared landholdings. Households marked with an arrow answered “Yes” to the question, “Does your land contain a concession?” Data source: household interviews. Note: The left-most poor household (a household with over ten hectares of residential land) probably represents an error in data recording or data entry. Source: Household interviews

Annex 4: Sino-Lao project sign board and map



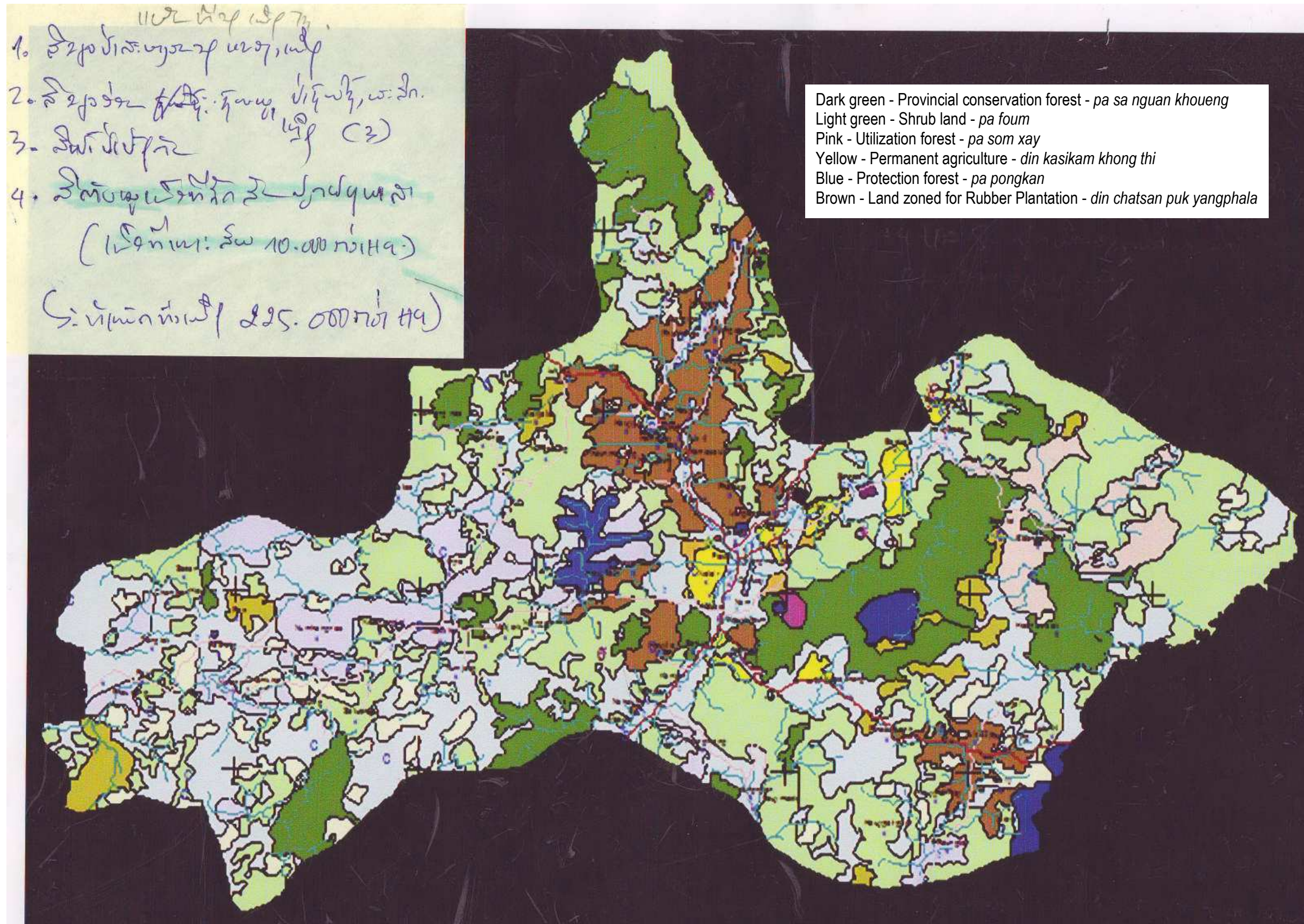
Located by the roadside (Route 3) near Kilometer 15 village. Note the unfinished legend (right side enlargement), but also see Figure 6 above.

2. Tha Meun village, Beng district (March or May 2007)

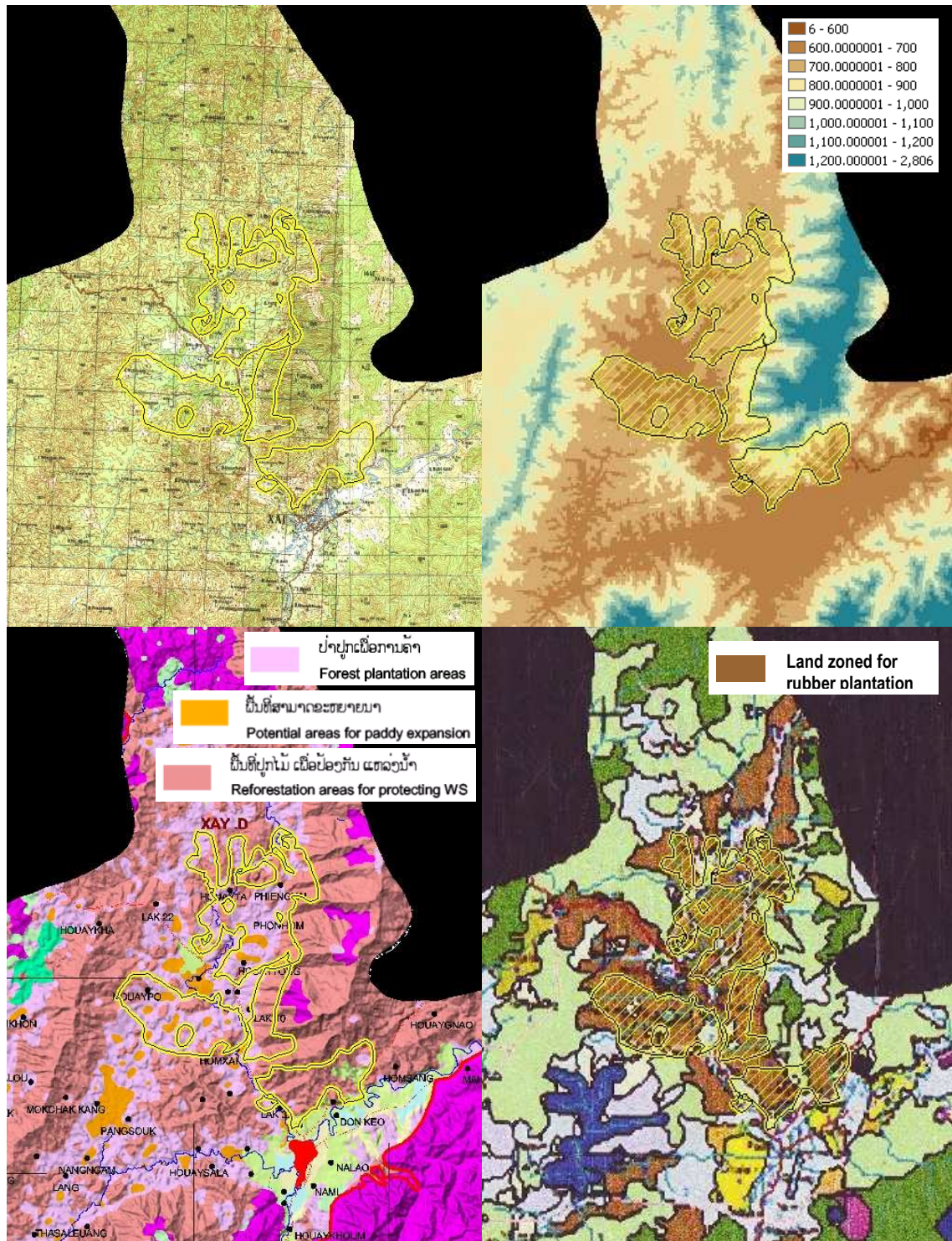


Annex 6: District-level zoning maps, Xai district

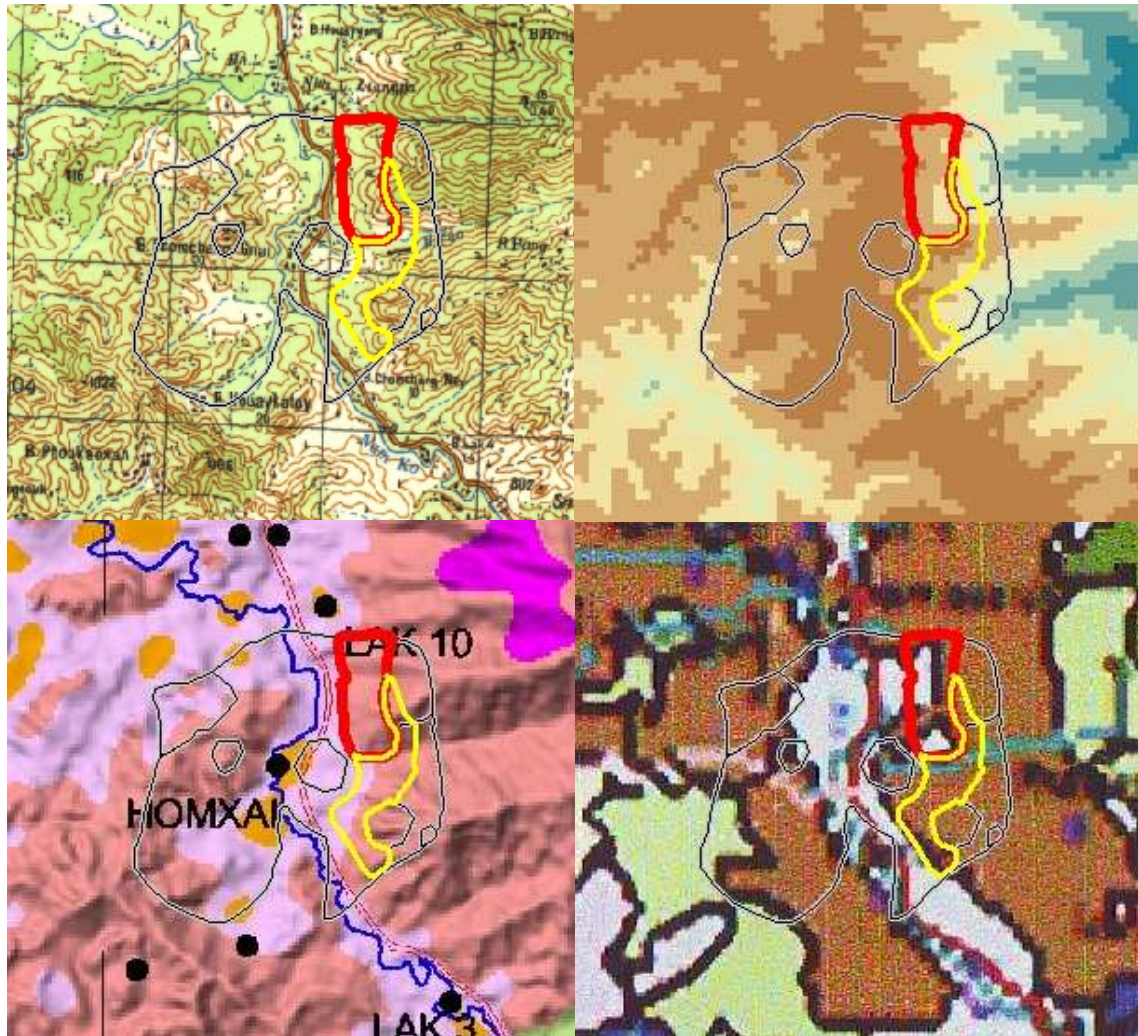
1. "Xai district map" from DAFO



Annex 7: Overlays of the surveyed Sino-Lao rubber zone (2004)



Sino-Lao planned rubber zone (yellow) according to the 2004 survey map (shown in Figure 6) overlaid on the 1:100,000 topographic map series (upper left), a digital elevation model (upper right: unit = meters), the NAFRI zoning map produced after the survey (lower left) and the district-scale zoning map of unknown origin. See Annex 6 for complete legends to the bottom two maps. This figure is approx. 1:300,000 scale.

Annex 8: Overlays of the actual Sino-Lao rubber zone, Homxay village (2008)

2008 Sino-Lao project rubber zone in Homxay village overlaid on the same maps as in Annex 7. The current rubber zone (approx. 80 hectares) is shown in red, and the future rubber expansion zone (approx. 100 hectares) in yellow. Homxay village territory management zones are shown in black. See Figure 9 for original Homxay map, and Annex 6 for additional map legends. This figure is approx. 1:100,000 scale.