



SOCIAL POLICY ECOLOGY RESEARCH INSTITUTE – SPERI

## Inconsistencies in forestland mapping in upland indigenous ethnic minority communities in Vietnam

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Case study: Community based forest allocation in Lung San village,  
Lung Sui commune, Simacai district, Lao Cai province

2012-2013



Figure 1: Villagers in Lung San joined in identifying forestland boundaries.

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## Part 1: Introduction

By 31 December 2009, the total population of indigenous ethnic minorities in 67 provinces and cities of Vietnam had reached 13 million people - equivalent to 14.27 percent. Of which, 99.57 percent live in midland and mountainous areas, including the Northern mountainous and midland (54.68%), Central Highland (35.29%) and North Central and Central Coastal (9.6%)<sup>1</sup>. Most of the mountainous indigenous ethnic minority groups live primarily on forest resources and forestry related activities. For these populations, the forest and forestland resources are not only production means with specific characteristics, but also have a very important role regarding poverty reduction, stability of the life, maintaining cultural identity, and ensuring political protection in rural mountainous areas.

As of 31 December 2010, Vietnam had 13,388,075 hectares of natural forest and plantation. This area has been allocated or contracted to different users for management and protection, including the Management Board of Special/Protection Forest (33.5%), community/village, households and groups of families (25.1% - equivalent to 3.3 million hectares), State Companies/Enterprises (16.1%), Communal People's Committees (19.3%) and others (6%)<sup>2</sup>.

It is a paradox that in the midland and mountainous areas (i.e. Northern mountains and midlands, Central Highland, North Central and Central Coast) where most of the forest and forestland is, the ratio of indigenous ethnic minority populations who face the most difficulties remains highest. As of 9 May 2012, Vietnam had about 326,909 poor indigenous ethnic minority families in mountainous areas that do not have enough residential and production land. This number is nearly equal with that which required investments at the beginning of policy implementation (2002-2008)<sup>3</sup>. According to statistics of the Ministry of Labor, Invalids and Social Affairs, by the end of 2006, most of the 62 poorest districts of the country are in the mountainous border regions. The poverty rate here is 3.5 times higher than the national average. Populations in these poor districts are 2.4 million, of which 90 percent are ethnic minority households.

In this article, I will review and analyze the results of field studies and assessment of forestland management and use, as a basis for forest allocation associated forestland allotment under the Joint Circular 07/2011/TTLT-MARD & MONRE in the H'mong community in Lung San village, Lung Sui commune, Simacai district, Lao Cai province.

The project pilot was implemented via the cooperation between Simacai District People's Committee, Lao Cai Provincial Department of Forestry and the Social Policy Ecology Research Institute (SPERI). The findings in this study hopefully contribute to shed light on questions related to:

- The actual results and effectiveness of forestland allocation, mapping and land use planning in indigenous ethnic minority communities in upland areas;
- Why ethnic minorities still lack productive land for the stability of life and economic development, while the formal statistics show that these groups have been allocated about one third of forestland of the whole country;
- Whether the land policies are still not proper or the implementation of these policies (forestland allocation, mapping and planning) needs to be adjusted? And
- If these policies are not proper, what points should be adjusted, and what mechanisms and or approaches should be applied in order to ensure the allocation of forestland effectively?

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<sup>1</sup> <http://www.cema.gov.vn/modules.php?name=Content&op=details&mid=117454234#ixzz27pFJFXQV>

<sup>2</sup> Statistics of the Vietnam Department of Forestry Protection in 2010 issued at [www.kiemlam.org.vn](http://www.kiemlam.org.vn)

<sup>3</sup> The report of monitoring group in monitoring the implementation of policies and laws on residential and production land for ethnic minorities in upland areas at the session 11, afternoon 3/9 of the Standing Committee of the National Assembly.

## History of resettlement

The H'mong people in Lung San village in particular and Simacai generally, originated from Tu Chua Sang - a landmark in Yunnan province, China. As a result of the tradition of living and farming practices as shifting cultivation and the civil war, the H'mong moved and settled in Lung San about 300-400 years ago. To maintain their customs and help each other in the process of moving, cultivation and making houses the H'mong community normally move by clans or in-groups of 2-3 clans.

Lung San, according to local residents is 'Long Sang' or "*Zaj laug nyob suam nghuab*", meaning 'Land Dragon'. This implies that Lung San is a hilly region of fertile land and dense forest locating along the watershed area of Chay River. Local people perceive that this land is sacred and governed by the 'Land Dragon' Spirit to protect the lives of all creatures. There is a running stream year-round. According to the opinion of villagers, this stream is home to the Water Dragon Spirit, known as 'Long Senh'/'Senh Sui' or "*Zaj laug tus nyob hauv dej*" in the H'mong language.

## General conditions

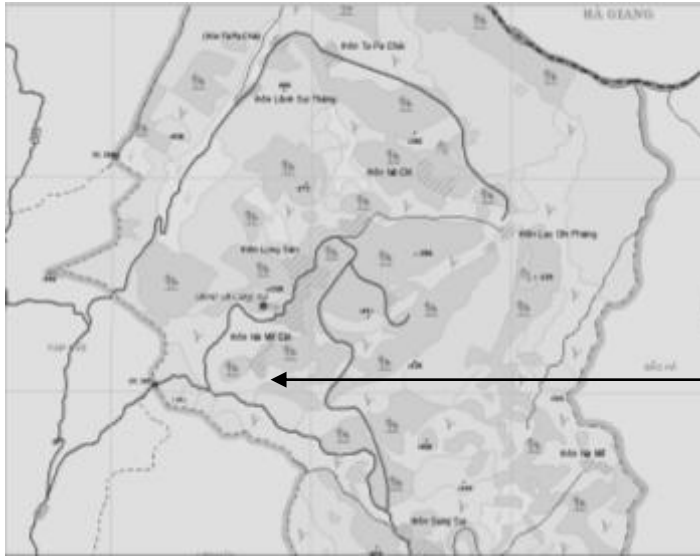


Figure 2: Map of Lung Sui commune, Simacai district.

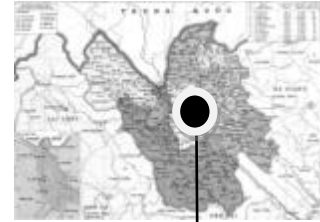


Figure 4: Map of Lao Cai province.

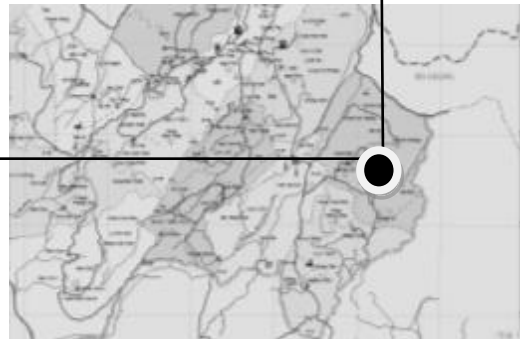


Figure 3: Map of Simacai district, Lao Cai province.

Lung San village of Lung Sui commune used to be a village within the administrative boundary of Bac Ha district, Hoang Lien Son province. Lung Sui commune was founded in 1981 on the basis of merger of Lung San and Seng Sui communes<sup>4</sup>. In 1991, Hoang Lien Son province was separated into Yen Bai and Lao Cai provinces and Lung Sui became a commune of Bac Ha district, Lao Cai province<sup>5</sup>. In 2000, Lung Sui commune became an administrative unit when Simacai was re-established from Bac Ha<sup>6</sup>.

Simacai is a mountainous district of Lao Cai province, located in the border area between Vietnam and China. The entire district has an area of 23,493.8 hectares, of which 53 percent is steep land with an average gradient of 25<sup>0</sup>; only 15 percent of the area is less than 15<sup>0</sup>.

Simacai has been home for quite a long time to 11 ethnic minority groups (mostly the H'mong group with more than 84%) with livelihood practices and cultural activities relying heavily on forests and forestland. The total population of the district, as of 1 April 2011, was around 32,762 people from 6,280 households. The area planned for forestland is about 9,169.5 hectares (39.02%), including forested area with 6,865.7 hectares (3,943.7 hectares of natural forests, accounting for 57.4%). Vacant land for forestry planning is 2,303.8 hectares.

Generally, forest cover in Simacai is low (about 25.4%<sup>7</sup>) and of scattered distribution. Forest has low quantity and tends to be degraded. Of the total forestland area which is categorized by function, protected forest accounts for 66.4% (4,560.7 hectares) and production forest is 33.6% (2,305.0 hectares). By users' classification, forestland of Simacai is currently managed by several users/managers, in which Simacai Management Board of Protection Forest manages 4,667.1 hectares (68.0%), Communal People's Committees manage 378.4 hectares (5.5%), while about 1,220.2 hectares (17.8%) are allocated to households, and others is about 600 hectares (8.7%).

Lung Sui commune is 15 km to the Southeast from the Simacai town, and about 90 km East of Lao Cai city. The commune is adjacent to several locations such as Ha Giang province (North), Lu Than commune (South), Can Cau commune (West) and Bac Ha district (East). The total land area of the commune is about 2,065 hectares, of which forestland is 665 hectares, accounting for 32.3 percent.

By December 2009, the total number of households in the commune was 409 with 2,166 people from diverse ethnic minority groups, including H'mong with 2,127 people (98.2%), 27 Vietnamese Kinh people (1.26%) and 8 Tay people (0.38%). The rest is divided equally between groups such as Nung, Phu La, Day and Dzao. Total number of laborers is 1,105 people, accounting for 51 percent of the total population. The labor structure is classified by following sectors: agricultural labor (1,012 people, equivalent 91.59%), small industry (8 people, i.e. 0.72%), and trading and services (85 people, accounting for 7.69%). Poverty rate of entire commune is high at 41.34 percent.

Lung Sui commune is a high mountainous area, with altitudes ranging from 800 to 1500 m (1200 m on average). The topography is very steep, almost about 25% on average for most areas, and is created by the many mountains that run steadily down from north to northeast. The highly fragmented land alternating in combination with high mountain ranges have made small and deep valleys, many of which

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<sup>4</sup> Decision [205/QD-CP of the Council of Government dated 28/ 05/ 1981](#) on the adjustment of administrative boundaries of some commune of Hoang Lien Son province.

<sup>5</sup> Resolution by the National Assembly Term VIII, Session 9 dated 08.12.1991 issued on the adjustment of the administrative boundaries of provinces and cities directly under the Central Government.

<sup>6</sup> [Degree 36/2000/ND-CP of the government dated 18/ 8/ 2000](#) on the adjustment of administrative boundary of Bac Ha district in the process of establishment of Simacai district, Lao Cai province.

<sup>7</sup> Decision 443/QD-UBND of the Lao Cai Provincial People's Committee dated 28/2/2011.

become cliffs. Besides, the narrow and vertical streams and rivers of the commune cause further difficulties for agricultural production of local residents.

Most of the forest area of Lung Sui commune has a long history of being voluntarily managed and protected by families, clans and communities over many generations. Each year, along with the encouragement and support of the local government, villagers planted around 2,000-3,000 pine trees. Therefore, with 34.9 percent of coverage, forests in Lung Sui are considered to be the best compared to other communes in Simacai district.

Lung San village is located in the center of Lung Sui commune. The village has 63 households with 327 people, including 161 women and 141 laborers. 100% of populations in the village are of the H'mong ethnic group, from seven clans such as Vang clan (21 households, 33.4%), Giang clan (16 households, 22.5%), Cu clan (12 households, 19.1%), Sung clan (5 households, 7.9%), Hau clan (5 households, 6.3%), Ly clan (5 households, 6.3%) and Trang clan (1 household, 1.5%).

Lung San is a hilly village, highly stratified from 800-1,500m above sea level. The highest point is the Trang Mountain (1,431m) and the lowest is Coc Pha Mountain (804m). Similar to Lung Sui commune, the topography of the village is mainly accounted for by over 25 percent steep land, and is created by many mountains that run from southwest to northeast and higher in the north. The village covers an area of 313.9 hectares, of which agricultural land is 58.5 hectares, residential land is 10.45 hectares, unused and other land are 105.45 hectares. About 139.6 hectares of forestland is classified into 124.38 hectares of protection forest, 13.83 hectares of natural production forest, and 1.39 hectares of planted forest.

## Part 2: The process of development of forms for the current forestland management in Lung San village

In early 2000, the Department for Geodesy and Map of Vietnam under the Ministry of Natural Resources and Environment (MoNRE) implemented the project "Establishment of cadastral maps, granting land use right certificates of forestland in eight northern mountainous, northern coast of the North Central provinces, and 9 Coastal Central and Southeast provinces<sup>8</sup>". This project aimed to speed up the granting of land use right certificates, focusing on residential land, forestland, and land for production and non-agricultural business to ensure the completion of granting land use right certificates proposed by the government.

From 2002 to 2005, MoNRE continued to direct the development of cadastral maps with aerial photos in order to exploit the land, promote the development of production and stabilize the lives of residents in the four most difficult mountainous provinces, including Ha Giang, Bac Kan, Cao Bang and Lao Cai, as well as provinces in the Central Highland. The base cadastral map system under this project was completed ahead of time in December 2004. Currently, provinces are using this base to set up cadastral maps for granting land use right certificates.

The base cadastral map system includes: the area of forestland planned for forestry; mixed land (i.e. pasture and agricultural land) and forestland planned for forestry; and area planned for continued forestland allocation. This cadastral map system is scaled at 1:10,000 which is then built in the VN-2000 system (i.e. satellite images with latest database). This system would meet the needs of providing a baseline for planning and development of the local economies. Within two years from 2005 to 2007, MoNRE was expected to complete the base cadastral map system. The rest would be the responsibility of the Provincial People's Committees within the scope of the project to continue to implement the detailed cadastral maps and grant land use right certificates.

Then, in 2005 Lao Cai Provincial Department of Natural Resources and Environment hired the consulting firm on natural resource technology service to make the details of the cadastral maps for granting the land use right certificates for people in Lao Cai. Lung Sui is one of the communes under this project.

As a result, in 2006 a map of forestland allocation with scale at 1:10,000 (see annex 1) was set up for Lung Sui commune including Lung San village and approved by Simacai District Office of Natural Resources and Environment and Simacai District People's Committee. The map refers to the number, location, area and objectives of land parcels allocated to users, including households, communities, commune, and Simacai Management Board of Protection Forest. According to the map, households are granted land use right certificates.

Further, in August 2008, the Lao Cai Provincial Forestry Department continued to review and set up a map for the current and planned three types of forestland in order to allocate to the Project 661 during the period from 2009 to 2010. The map is at the scale 1:25,000 (see annex 2). During this process, in the same year, the Lao Cai Provincial Forestry Department also established a map of the current status of forests for Lung San village, Lung Sui commune with the scale of 1:25,000 (see annex 3).

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<sup>8</sup>The Department for Geodesy and Map of Vietnam – Ministry of Natural Resources and Environment (MONRE). <http://www.dosm.gov.vn/default.aspx?tabid=402>



## Part 3: Types of legalized forestland management in Lung San village

Along with the above three maps provided and conducted by government offices, Lung San villagers also claim their own forestland 'ownership' according to their traditional perception and customary laws; so that there are several types of overlapping forestland management currently practiced in Lung San village.

### The allocated forestland of households

About 59 households in Lung San village were allocated 86 plots of forestland, equivalent to 61.9 hectares including protection and production forestland under the Decree 163/1999/ND-CP. Some of them were allocated forest for management, but not land; so that, they only got temporary certificates namely 'Blue books'. About 36/59 households have not yet got land use right certificates (i.e. Red books) **due to the differences and inconsistencies between data and information mentioned in the Red books, on maps of forestland allocation and in reality** (see more details in next parts). These Red books are being kept in the office of land management unit, Lung Sui Communal People's Committee.

### Contracted forestland of groups of households

This type of forestland was established based on the alignment of households who reside together within a village, or some households with blood relationships or lineage connection.

This area is mostly production forestland or rehabilitated forest after the shifting cultivation cycle. The government made contracts with households to protect this forest in line with the national program 327 (i.e. re-greening five million hectares of the barren hills), Decree 01/1995/ND-CP. Due to the small and scattered area, households then collaborated with each other for more convenience and effectiveness in the process of management.

These groups of households self-assigned tasks to protect forests. The tasks could be assigned for individuals or whole group to implement patrols for forest protection. Compared to the mode of community based forest management, this type of organization is small at scale, easy to organize, manage and unify; so that, it is consistent with the current capacity of the community.

This contracted forestland for the groups of households (Blue books) was afterwards converted as land use right certificates (Red books) under the Decree 163/1999/ND-CP. However, the Red book only entitles the group leader who represents the whole group; so that, he is the only one to get the annual contracted compensations from forest protection. At present, in some areas, this forest is cleared by some people within and outside the community. One of the main reasons is that these people do not feel treated fairly. Some families expressed that they are not sharing in the contracted compensations even though they are all involved in forest protection. Furthermore, the forestland which used to belong to whole group, now only entitles one people via the land use right certificate (Red book).

### Village forestland

Currently, Lung San village manages 18 plots of common village forestland with a total area of 180.6 hectares. However, the village is only assigned with the role of representing the Lung Sui Communal People's Committee to manage this forestland area. Other villages in Lung Sui commune are not yet granted the land use right certificates (i.e. Red books). This area of common village forestland includes: i) 'Thu Ti' forestland – the traditional community forestland for performing the customs, religions/beliefs and practices of the H'mong, ii) use forest, iii) unused land, iv) residential land and v) agricultural land.

## **Forestland managed by Communal People's Committee**

Lung Sui Communal People's Committee is responsible for managing land and forest within the assigned administrative boundary. Specifically, the commune is assigned to manage 12.2 hectares, including three plots of forestland which are the spiritual 'Nao Long' spaces.

## **Forestland managed by Simacai Management Board of Protection Forest**

Simacai Management Board of Protection Forest has been established via the conversion process from the administration board of national program 327, then the Program 661 under the decision of Lao Cai Provincial People's Committee No. 3091/UB-QD.CT dated 27 December, 2001.

Management Board for the 661 Program is, on behalf of the government, the investor to implement the objectives and tasks to plant new forests under the national program 327 by the Decision No.327/CT/1992 of the Ministerial Council on 'some directions and policies for using unused land, barren hills, forests, coastal mudflats and water', as well as implementing tasks according to the annual plan assigned by the Provincial People's Committee. Lao Cai Provincial People's Committee issued a Decision No. 1280/QD-UB-CT dated 8 May 2008 on the conversion of the Management Board of the 661 Program in Simacai district to become Management Board of Protection Forest. This Board is directly under the management of Lao Cai Provincial Department of Forestry. Lao Cai Provincial People's Committee issued a Decision 4524/UBND dated 31 December 2008 on shifting the Simacai Management Board of Protection Forest from Lao Cai Provincial Department of Forestry to the direct administration of Simacai District People's Committee.

Simacai Management Board of Protection Forest is then assigned functions, including: i) Receiving capital investments of the government, coordinating with Communal People's Committees, District Office of Forest Protection to implement the allocation and contracts with organizations, households, individuals and communities/villages to protect and develop forest, ii) coordinating with forest rangers to protect forest and manage forest productions in the whole district, and iii) implementing the endorsement of forestry extension in 96 villages/communes of Simacai.

Total area managed by Simacai Management Board of Protection Forest until December 2011 is 4,843 hectares with natural forest and bare land, accounting for 20 percent of the entire land of Simacai. As the forest manager, assigned by the government, due to the limited human resources (only 8 officials), while the activity spreads over a quite large area and complex topography, Simacai Management Board of Protection Forest seems to play an 'intermediate' role to implement the government policies and services regarding forest management and protection. The management board mainly makes contracts with households, groups of households and communities to manage the protection and afforestation. Besides, the management board delivers seedlings, provides fertilizers and technical supports for local people in 96 villages of 13 communes. In Lung San village, Simacai Management Board of Protection Forest is assigned to manage 6 plots of forestland with about 60.2 hectares.

## Part 4: Pilot on forest allocation associated with forestland allotment for the H'mong community in Lung San village

Forestland allocation for people, especially rural communities/villages is considered an important strategy of the government with the purpose to manage and use forestland effectively, contributing to stabilize the life of ethnic minorities in upland areas, promote economic development and create a driving force for sustainable development<sup>9</sup>. Accordingly, the village community is considered as one of the forestland users with full or incomplete legal status depending on the conditions of each area and types of forestland allocated or contracted. The community is allocated forest and forestry land, and receives long-term contracts of forest management so the community is entitled to participate in management, protection and use of forests and forestland. At the same time, the community fulfills all obligations in the process of participating in forest management and protection as well as efficient use of forestland.

However, in Simacai, the government policies on allocation and contract of forestland for local communities have almost never been deployed in practice. Or, they are only implemented via plots or in a fragmented manner. Inadequacy of synchronization regarding the results of forestland allocation for users (i.e. households, village community, management board of protection forest and so forth), inconsistency in terms of forestland allocation and mapping, as well as lack of full participation of local people have led to many difficulties in forest management and efficient use of forestland in Simacai.

From June 2011 to December 2012, Simacai District People's Committee via the Steering Committee on Forestland Allocation, Lao Cai Provincial Department of Forestry and Social Policy Ecology Research Institute (SPERI)<sup>10</sup>, with financial support from Norwegian Peoples Aid (NPA), have collaborated to carry out a pilot model on forest allocation associated with forestland allotment under the Joint Circular 07/2011/TTLT-BNN-BTN&MT<sup>11</sup> (hereafter called Joint Circular 07) for communities in the two communes of Nan Sin and Lung Sui in Simacai district.

Primary objectives of the program are to:

- Have a pilot model in terms of collaboration between different relevant agencies i.e. Simacai district People's Committee, Lao Cai Provincial Department of Forestry and SPERI to co-

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<sup>9</sup> Decision 184/HĐBT of the Ministerial Council dated 6/11/1982 on forestland allocation to organization and people for reforestation; Directive 29-CT/TW of the Secretariat of Central Communist Party dated 12/11/1983 on promoting forestland allocation, reforestation and agro-forestry business orientation; The national program 327 – forestland allocation and contracting for re-greening the barren hills; Degree 02/1994/ND-CP and Circular 6/1994/LN-KL of Ministry of Forestry on guiding the implementation of Degree 02/1994/ND-CP; Degree 01/1995/ND-CP; Degree 163/1999/ND-CP and Joint Circular 62/2000/TTLT-BNN-TCDC of Ministry of Agriculture and Rural Development and Department of Land (Ministry of Natural Resources and Environment) dated 6/6/2000 on guiding the land allocation, land lease and granting forestland use right certificates (Red books) under the Degree 163/1999/ND-CP; Degree 181/2004/ND-CP on implementing the law on land in 2003; Degree 23/2006/ND-CP on implementing the law on forest protection and development in 2004; and Degree 135/2005/ND-CP on forest contract and allocation.

<sup>10</sup> Memorandum of Understanding (MOU) between the Steering Committee on Forestland Allocation of Simacai, Lao Cai provincial department of forestry and Social Policy Ecology Research Institute (SPERI) signed on 11 August 2011 on collaboration in implementing the pilot model in forest allocation associated with forestland allotment for local communities / villages in Simacai.

<sup>11</sup> Given the practice of slow and inconsistent implementation of forestland allocation, Ministry of Agriculture and Rural Development (MARD) and Ministry of Natural Resources and Environment (MONRE) issued the joint circular 07/2011/TTLT-BNNPTNT-BTN&MT dated 29/01/2011 on guiding forest allocation and lease associated with forestland allocation and lease. Resolution of the above difficulty is also an advantage for many users to compete for land acquisition, and benefit from forests. Clearly, enterprises, elites and well-off actors will have more advantage in this process, if the priorities of local communities and people are not clearly confirmed in the legal framework. The issuance of this Circular is also an opportunity to formalize the rights and obligations to the local communities while ensuring the right to livelihood, religion, co-responsibility and participation of local people.

implement forestland allocation to local communities in Simacai under the Joint Circular 07 as a basis for further studies, developing guidelines for expansion to other localities;

- Promote and enhance awareness and capacity of local communities on government policies in management and use of natural resources, particularly the rights and responsibilities of land users;
- Have suitable methodologies for resolving problems, disputes and overlaps of forestland boundaries in the process of forestland management in Simacai;
- Contribute to enhance professional skills and forestland allocation approaches, particularly conflict resolutions for local government officials/technicians;
- Ensure rights and responsibilities of different stakeholders, particularly local communities in the process of sustainable management and use of forestland resources, contributing to stabilize the lives of local people.

The main content of the cooperation program includes, i) reviewing the land boundaries, types of forest and forestland in the pilot communities on the basis of plan of local socio-cultural-economic needs and projections for the future development, ii) setting up a set of criteria and approaches to resolve overlapping boundaries of forestland management in villages/communities, iii) making plans and land allocation approaches of forestland allocation for different users, iv) implementing forest allocation associated with forestland allotment for communities/villages in 02 pilot communes as well as completing the order process and procedures of forest allocation associated with forestland allotment for local communities in the context of Simacai particularly and Lao Cai in general; v) strengthening the customary laws of communities via setting up community based regulations in forestland management in the post-forestland allocation.

To achieve the above objectives, the parties agreed that the phase I (2011-2012) the pilot will be implemented in the H'mong community in Lung San village, Lung Sui commune. Then, Simacai district People's Committee set up a Steering Committee on Forestland Allocation and Assistant Group to implement the Joint Circular 07 in Simacai, as well as a Technical Group for carrying out the pilot<sup>12</sup> in Lung San village.

Accordingly, from September to November 2011, the Technical Group, SPERI, Lao Cai Provincial Department of Forestry, Forestland Allocation Council of Lung Sui commune (hereafter called as Working Group - WG), and elders and key farmers conducted studies on traditions of management and use of forestland, as well customary governance of the H'mong. Also, the team has conducted reviews of the actual situation of forestland management in Lung San village in order to set up a basis for the next steps of forestland allocation to different users.

## Customary forestland governance of the H'mong in Lung San village

To have approaches of forestland allocation appropriate with the particular social-cultural-economic conditions of localities, especially resolving issues related to forestland boundary overlapping and conflicts amongst land users, WG collected records of the traditional forestland governing systems of the H'mong. This process included village elders, clan heads and prestigious people who understand much about the customs and practices of the H'mong. The records are local stories and practical evidences related to the understanding and practice of concepts of ownership, management and utilization and benefit distributions from forestland. History of resettlement and landmarks of forestland pieces of the H'mong were also recorded carefully. WG also recorded the stories related to the concept of value and

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<sup>12</sup> Decision No. 545/QĐ-UBND dated 2/6/2011 on establishing the Steering Committee on forest allocation and least in Simacai during the period from 2011 to 2015.



the traditional governance system, especially how to resolve conflicts related to forestland amongst households, clans within and outside the community.

### Survey and classification of the traditional community forestland

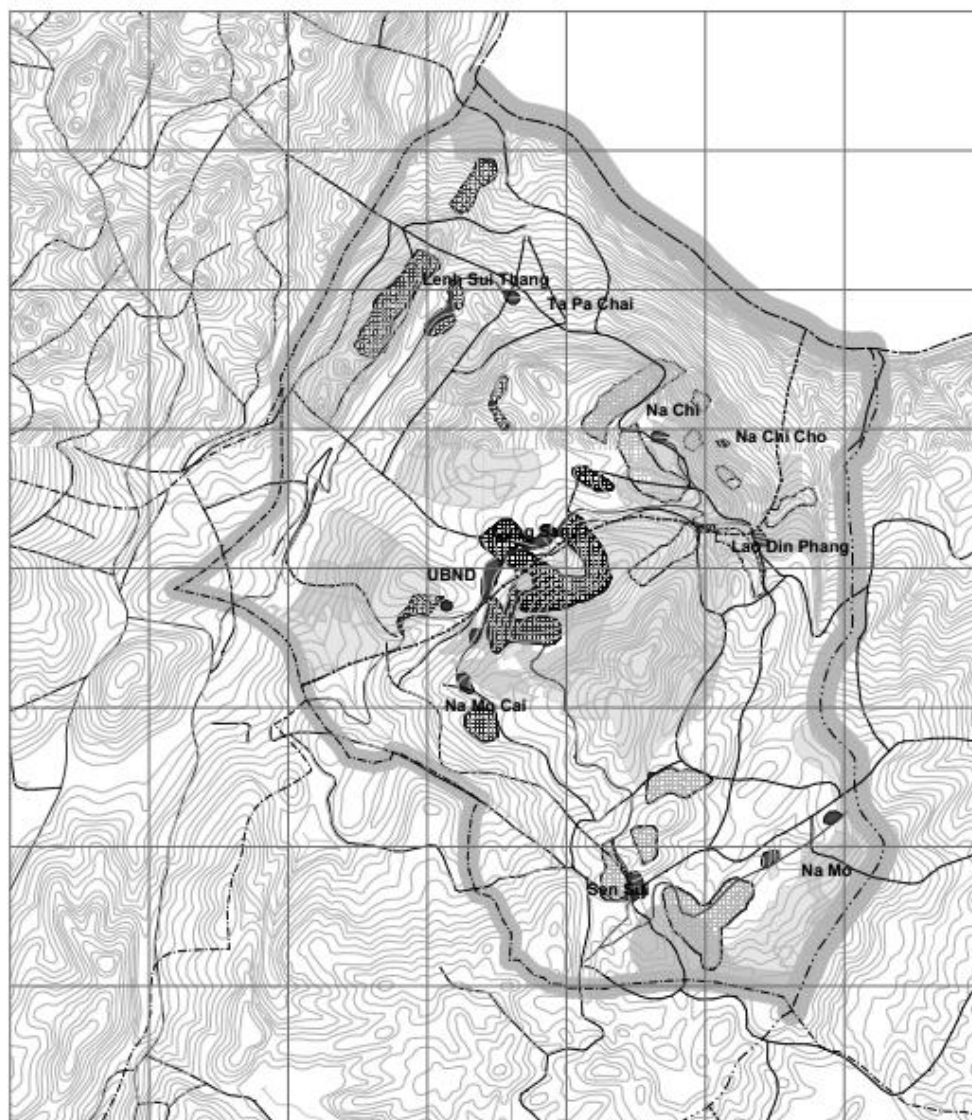


Figure 5: Map for different types of traditional community forestlands in Lung Sui commune (made by local villagers and SPERI).

In order to recognize the elements and values of reclaiming, possession, and inheritance of forestland which have been de facto accepted throughout many generations, the project conducted a series of survey and assessment of the traditional community forestland e.g. 'Nao Long' and 'Thu Ti' as well as that of different clans and families. These investigations help the WG to understand the notion and practices regarding 'ownership' of land & forest of the H'mong in Lung San.

The results of these investigations will help to resolve conflicts over forestland resources peacefully - on the basis of the origin of ownership. WG has enabled village leaders, elders, clan's heads, prestigious people, and representatives of the families and land users in the village to recall the history of land

reclaiming, possession and inheritance or the contracts of allocations of forestland they have managed and used. Primary methods that the working group has applied include:

- Identify and measure the boundaries of traditional community forestland on the maps of cadastral and current forestland on the basis of the community's rules on land boundaries and existing terrains.
- Describe the current state of the forest (rich, average, poor) on the basis of understanding and practices of local people on forest classification.
- Calculate area of each type of forestland on the basis of local understanding in combination with modern techniques.
- Draw a diagram of historical inheritance and transfer of all types of forestlands through memory and the historical events of the community.

Besides this, representatives of the community described the history and process of receiving and implementing the government policies and projects in relations to forestland; for example, the national Program 327, the Program 661, the Program 30A, Decree 01/1995-ND-CP and Decree 163/1999-ND-CP, etc. The methods on forestland contract and allocation, the distribution of benefits from forest management, and responsibilities of different actors from the implementation of government policies and programs are also discussed and recorded. Information and data during the course of learning not only helped WG to resolve land disputes and boundary overlaps effectively, but also draw lessons learnt and experiences for the next stages of the forestland allocation.

### **Community based forestland boundary identification and demarcation**

The community based forestland boundary identification and demarcation as well as the area of different types of forestland of users is an important step in forestland allocation, especially the resolutions of land disputes. WG, together with representatives of the land users, village leaders, elders, clans' heads and prestigious people in the community identified and reviewed boundaries for each type of forestland of different users in Lung San. With the support of the technical specifications, the forestland users directly measured and made field marks; technical officials recorded information and data and double-checked with GPS. The identification and demarcation of forestland boundaries in the field were consulted with the neighboring land users and witness of village leaders, elders and representatives of village mass-organizations to get confirmation. Information and data related to the forestland boundaries, conflicts/disputes as well as understanding of villagers on land boundaries, land marks and the traditional land boundary identification and demarcation, etc. are carefully written down.

Besides, on the basis of the practical survey and assessment, WG has also recorded reflections of villagers regarding the previous methods and results of forestland allocations which were conducted in Lung San; for example, the measurement and cadastral mapping for land allocation in 2005, assessment and establishment of mapping systems for the Program 661 during the period from 2009 to 2010, as well the mapping system of current forest resources in 2009.

### **Community based forest status assessment**

Community based forest status assessment aims to record local knowledge system of the H'mong in the course of forest resources management, use and development. It further helps the WG and villagers to recognize the changes in the quality and volume of forest resource through periods with important events taking place in the community; from which to discuss how to manage and use forest resources in appropriate and sustainable ways in the future.

This method also encourages local people to participate and share their understanding of forest classification, e.g. watershed forests, spiritual 'Nao Long' and 'Thu Ti' forests on the basis of their daily observations and practices. Along with the technical criteria in forest classification, information and data recorded from the field helped the WG to obtain more experiences and knowledge of the H'mong related to the socio-cultural ecological aspects in the process of forestland classification and planning.

## **Comparing the results of practical forestland survey and assessment with the formal map systems**

The tendency is that, modern technologies such as GIS (Geographical Information System), GPS (Geographical Position System) or 'expert' methods in mapping, forestland allocation, planning, preservation and development of natural resources are increasingly applied. These tools and methods in reality reveal many shortcomings and criticism such as the separation between modern science and technology with experience/knowledge of the locals, not promoting local participation, particularly land users. Sometimes, the lack of participation is due to the complexity of technologies while local people have low education qualification, particularly with the H'mong in Lung San village who almost are not fluent in reading and speaking Vietnamese. This has caused many flaws in mapping, land allocation and forestland resources planning in reality.

To minimize the shortcomings mentioned above, the WG has tried to promote full active participation of villagers, land users and relevant stakeholders such as Lao Cai Provincial Department of Forestry, Simacai Offices of Natural Resources and Environment, Simacai Office of Forest Protection, Simacai Office of Agriculture and Rural Development, Simacai Management Board of Protection Forest, Lung Sui Communal People's Committee and other professionals to involve in analysis, comparison and criticism for the results gained from the practical survey and assessment with the existing system of maps and land registered books i.e. map of forestland allocation with scale at 1:10,000 made in 2006 (see annex 1), map for the current and planned three types of forestland with scale at 1:25,000 made in 2008 (see annex 2), and map of the current status of forests with scale at 1: 25,000 made in 2008 (see annex 3).

By this method, besides the criteria for technology, techniques and 'expert' methods, the democratic participation of all sectors in the community could help the WG to identify and integrate the local socio-cultural-ecological conditions through daily practices and knowledge of the H'mong into the process of forestland assessment, demarcation, measurement and mapping (current, planning and allocation) as well as natural resource planning afterwards. This method is aimed at improving the skills and capacity of villagers, especially village leaders and technical staffs of the commune and district levels in the process of monitoring the management and use of natural resources in the post-land allocation.

## **Forms of the traditional community forestland management**

Traditionally, the actors involved in the management and use of forestland in Lung San varies, including village communities, clans and households. Most community management and protection of forestland is for non-economic purposes but mainly to maintain the belief-space and resources of livelihood. The forest community is associated with environmental protection of the village, especially maintaining the water sources for the whole community, and contributing to meet social needs, such as indigenous religious belief and traditional culture. Community forest management method is simply through the essential use of existing capital and labor. Members of the community together involve in management and protection of the forest resources based on the principle of voluntary and mutual benefit.

*Community forestland:*

This form of forestland has long existed as a space for the H'mong community to practice and maintain their religious values towards natural spirits such as 'Long Senh' (Land Dragon) and 'Long Sang' (Water Dragon) via traditional rituals i.e. 'Nao Long' and 'Thu Ti' ceremonies. Therefore, they usually call this form of forestland as 'Nao Long' forestland or 'Thu Ti' forestland.

The community forestland has been de facto recognized over many generations as 'owned' by the whole community. The management and protection of community forestland is closely associated with the traditional practices and ideology of the community, the roles of elderly, prestigious people and clan heads are important. Most of forestland management is clearly assigned to particular members of the community, which they implement seriously and voluntarily. In addition to the spiritual purpose, this forestland provides reserved resources to ensure the livelihood of households in the community such as maintaining water sources for living, cultivation, housing, firewood, herbal medicines and food.

The community forestland management is considered as viable. However, this form only reflects the 'de facto', 'self-recognition' within community or amongst communities. In the minds of villagers, these community forestland areas have always belonged to them and were transferred to them by their previous generations. Yet, local communities still do not have the rights to manage and use these forestland areas under the law.

#### *Kinship forestland:*

For the H'mong in Simacai, the traditional institution in natural resources governance is based primarily on the kinship structure. Although, the government has made efforts to implement forestland allocation for families, the practical meaning and effective use and governance of forestland is still dependent largely on the relationships between clans. Any changes, adjustments in land use planning, or resolving of disagreements in the process of land use must be consulted with clans' heads. The H'mong always prioritizes members within the same clans during the process of buying, selling, leasing or transferring land<sup>13</sup>.

This form of forestland management has also long existed and been established together with the course of migration, cultivation and resettlement of the H'mong. The clan's forestland is inherited over generations in accordance with the rules of each clan. For instance, forestland of Hoang kin-group in Ta Can Ho village, Can Ho commune, and Simacai district has been managed and inherited through nine generations.

The kinship forests are primarily managed for the purpose of serving livelihoods of members such as providing timber, firewood, herbal medicines, vegetables and so forth. Other families in the community who are not in the same clan could access to use above forest products after consulting with the representatives of clan. Besides, some kinship's forests have a purpose of maintaining water sources for living and farming of clan families, as well as adjacent cultivated farms. Sometimes, the kinship forestland is used for the spiritual purposes such as 'Thu Ti' worshipping for whole community. Therefore, villagers call it as 'Thu Ti' forestland.

Although, this type of forestland belongs to the 'ownership' of each clan, other families in the community participate in the process of management in a voluntary and viable manner on the basis of unwritten regulations of the clan, and is recognized by the whole community via the 'Nao Long' or 'Thu Ti' traditional institutions.

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<sup>13</sup> Research report on the role of customary law in development of ethnic minority groups in Vietnam – conducted by Social Policy Ecology Research Institute (SPERI) and Consultancy Institute on Development (CODE), funded by UNDP-Vietnam in 2010.



Like the community forestland, although it is yet not recognized by the law, in fact, this form has been de facto accepted within H'mong communities and existing through many generations.

*Family forestland:*

These types of forestland areas are mainly reclaimed by families, inherited or bought from others; so that, it is called traditional family forestland. According to the customary law of H'mong, traditional forestland reflects its practical implication only if it is recognized by the whole community as well as after the worshipping 'Thu Ti' - the Land Spirit.

So, the traditional forestland of H'mong families is made up from self-reclaim, inheritance, transfer, but also to be worshiped and offered via 'Thu Ti' - the Land Spirit, to allow such families to use those lands, and bless them with healthy, thriving, and bumper crops. The significance of traditional family land is its need of spiritual confirmation and affirmation of the whole community. The customary laws of H'mong ensure the sustainability and duration of the family land. There is no competition or conflict in the community for this land as the use of this land is already allowed by the spirits and recognized by the entire community. This certification is the unwritten rules all members of the community know and follow.

The traditional land is normally associated with its traditional boundaries. The traditional boundaries are defined by the big trees and rocks. Where there are no rocks and trees, they make small paths or plant small wooden stakes. When other families saw such symbols they will not trespass.

For the traditional family forestland, heads of the families, so-called land owners have rights to dispose via use and benefit, donation, lease or transfer. Land owners even have the right to decide to worship 'Thu Ti' on their traditional land. In some cases, it is possible for the other families to use the traditional land for a temporary period. Both borrowers and owners just orally discuss and borrow such land, without complicated procedures. The traditional family farming land can be sold, transferred for reasons of moving to live somewhere else or for economic reasons. In order to maintain the ownership of land and properties of the families or clans, brothers in the same family or same clan are given the first priority in the process of transfer, buying/selling. Outsiders are considered if there is not any need amongst brothers in the family or members of the clan.

The family forestland is of two main types, including land for shifting cultivation and regenerated forest after farming. In the past, these two types of lands used to be rotated for each cultivation cycle. Currently, this rotation is almost finished due to the high population density and limited amount of arable land. Then, villagers have developed such land areas to become terraces for intensive cultivation of rice and other crops. Some plots are preserved to become forests to serve the daily needs of families such as timber for house, firewood, herbal medicines and food. These forests are normally quite small with the area from 0.5 to 1.5 hectares, scattered and interspersed with terraced fields.

## Part 5: Inconsistencies in the previous forestland allocation and planning in Lung San village

### Differences between the understanding and practices on the concept of 'ownership' to forestland

Via studying and interviewing with those who have been involved in forestland management and use in Lung San village, including elderly, village leader, clan heads, representatives of families, local officials and so forth, the WG found a diversity of understandings and practices related to the concept of 'ownership' of forestland resources.

Traditionally, all inherited, purchased or self-reclaimed land and forest, i.e. paddy farms, clan forestland, community forestland and so forth belonged to the traditional ownerships of households, clans or the whole community. Furthermore, the recognition by community members of the possession by someone to forestland occurred when and only when the tenure process (reclamation, purchase, inheritance, etc.) of those people had passed through the traditional ritual to worship the land spirit 'Thu Ti' with the witness of all community representatives. This practice of the notion of 'ownership' of forestland is still very popular in Lung San village in particular, and in communities of the H'mong in Simacai in general.

Along with the above notion and practice of 'traditional ownership' of forestland, since 2006 through the forestland allocation program under Decree 163/1999/ND-CP, families in Lung San village have got formal land use right certificates (Red books). A small number of people in Lung San - mostly men and young can understand the regulations on rights and responsibilities of people to the allocated forestland. Since most women do not know how to read, write and speak Vietnamese, they did not participate in village meetings, so they hardly understand their rights and responsibilities to the allocated forestland. In the training process of the State's policy for land-forests, the Working Group recognized that the villagers hardly understand the concept of *'land is the people's ownership ... the state is representative of the owner ...'* which is mentioned in the Constitution, Law on Land and other relevant policy documents. Villagers still thought that the land & forest 'belonged' to them, inherited from their previous generations over a long time, or from those who explored/reclaimed or bought; so that they have sole discretion and rights to dispose on their forestland. Land use right certificates (Red books) are effective only upon the occurrence of disputes that cannot be resolved in the community, but via relevant authorities or courts<sup>14</sup>.

### Several land users on the same plot of forestland

According to the map of forestland allocation in 2006, the criteria of natural resources and environment sector (MoNRE), the working group found 17 plots with a total area of 52 hectares which are classified as natural (planted) production forestland. However, in reality, there are 32 plots of these types of forestland, accounting for about 82.7 percent of 62.9 hectares which were already allocated to families in Lung San village under Degree 163/1999/ND-CP (see table 1) in 2004. According to the provisions in the Law on Forest Protection and Development in 2004, families are responsible for rehabilitating and protecting the allocated forestland. They are not allowed to do agricultural production on these areas.

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<sup>14</sup> Research report on the role of customary law in development of ethnic minority groups in Vietnam – conducted by Social Policy Ecology Research Institute (SPERI) and Consultancy Institute on Development (CODE), funded by UNDP-Vietnam in 2010.

**Table 1: Planted (natural) production forestland allocated to families in Lung San village in 2006.**

<i>No.</i>	<i>Plots</i>	<i>Types of forest</i>	<i>Area (m<sup>2</sup>)</i>
1	109	Planted production forestland	91,156
2	127	Planted production forestland	19,252
3	77	Planted production forestland	11,106
4	206	Planted production forestland	67,761
5	168	Planted production forestland	104,796
6	193	Planted production forestland	45,000
7	154	Planted production forestland	24,260
8	163	Planted production forestland	12,030
9	158	Planted production forestland	14,203
10	138	Planted production forestland	39,758
11	107	Planted production forestland	11,601
12	96	Planted production forestland	12,830
13	78	Planted production forestland	11,596
14	65	Planted production forestland	19,607
15	113	Planted production forestland	10,528
16	165	Natural production forestland	16,247
17	121	Natural production forestland	10,528
<b>Sum</b>			<b>522,259</b>

However, according to the tradition, through many generations, the above forest areas have been reserved for agricultural production such as slash and burnt cultivation. Therefore, in the consciousness of villagers, those areas are still arable land. Along with the growing population, the demand for agricultural land use by the community also increased, while the area of traditional farming became protection forest which is preserved strictly under the government policies and laws. Villagers are not allowed to cultivate in these areas. Therefore, there are many cases where local people still cultivate on these forestlands for several seasons or make fixed terraces.

Paradoxically, according to criteria of the forestry sector in inventory, planning, classification and mapping for the three types of forests in 2008, forestland areas which were already allocated to families in 2006 are continuously categorized as protection forest. Therefore, they are delineated on a map, and then assigned to Simacai Management Board of Protection Forest to manage. In other words, the land use rights of the family users who were entitled in 2006 on the basis of criteria of natural resources and environment sector are not inherited, but also negated by the criteria of the forestry sector. Even though, the results of different assessment, surveys and allocations remain and overlap with each other. It is clear that at the same time, different land users are entitled to different rights and responsibilities on the same plot of forestland. This has caused many difficulties in the management and protection of forests due to the increasing conflicts and disputes between land users.

### **The traditional spiritual community forest is not yet recognized in the process of classification for the three types of forest**

As mentioned above, the topography of Simacai district in general and Lung San village in particular is the steepness and roughness of the terrain. As a result, the deployment of classifications for the three

types of forest (special forest, protection forest and production forest) in such areas may be accurate according to the technical criteria, but might not be appropriate in the areas with a diversity of socio-economic and cultural conditions, in Lung San particularly and in Simacai in general.

According to the classification of the H'mong, forest in Lung San village is classified into categories, including sacred forests e.g. 'Nao Long' and 'Thu ti' forests, watershed forest for preservation of water sources for agricultural production and livelihoods of the villagers, and use forest for families and whole community. These three types of forest correspond to that of the government classification as special forest, protection forest and production forest. However, only the protection and production forests are mentioned in the formal documents of Simacai. This means that the traditional 'Thu Ti' and 'Nao Long' forests of the community are not yet formally recognized; therefore they are out of the formal forestland classification system.

## Deviation on the allocated forestland positions

The working group initially found 11 plots which were incorrectly positioned compared with that in the map of forestland allocation made in 2006 for Lung San village. After further field checking, of the 86 plots which are mentioned on the allocated forestland map, the positions of 28 plots accounting for 33%, were found to be incorrect (see table 2).

**Table 2: Plots differently positioned compared to the map of forestland allocation in Lung San village in 2006.**

<i>Total plots on the forestland allocation map in 2006</i>	<i>Plots correctly positioned</i>	<i>Plots incorrectly positioned</i>
<b>86 (100%)</b>	57 (67%)	28 (33%)

Most of the plots which are incorrectly positioned are found in the 'Chong Che Te' region. Average deviation is about 355 meters. The biggest difference happens in plot 130 and plot 142, 'Chong Che Te' region, while the smallest deviation falls in the plot 150 and 'Lung San' region (see table 3).

**Table 3: Deviations in position of plots found in Lung San village.**

<i>No.</i>	<i>Plot</i>	<i>Region</i>	<i>Deviation (m)</i>	<i>Direction</i>
<b>1</b>	143	Chong Che Te	350	Northeast
<b>2</b>	126	Chong Che Te	400	West
<b>3</b>	134	Chong Che Te	350	Northeast
<b>4</b>	129	Chong Che Te	350	West
<b>5</b>	84	Chong Che Te	300	North
<b>6</b>	144	Chong Che Te	300	Northeast
<b>7</b>	130	Chong Che Te	1000	South
<b>8</b>	159	Chong Che Te	700	Southwest
<b>9</b>	142	Chong Che Te	1000	Southwest
<b>10</b>	151	Chong Che Te	150	Southeast
<b>11</b>	150	Lung San	100	

## Overlapping amongst different types of maps

Although the map of current status of forests and map for the current and planned three types of forestland are all at scale of 1:25,000, the working group found inconsistencies in the maps. The map of current status of forests has distances greater by about 100 meters compared with that of the map for the current and planned three types of forestland. Through comparison with the VN2000 standardized map with scale of 1:50,000, the working group found that the map of current status of forests was of the scale of 1:15,000.

Moreover, the land users who are mentioned in the map of forestland allocation, the map of current status of forests, and the map for the current and planned three types of forestland are very different. According to the map of forestland allocation, the land users in Lung San village mentioned include households, Lung San community, groups of families, Lung Sui Communal People's Committee and Simacai Management Board of Protection Forest. Nevertheless, the map for the current and planned three types of forestland only mentions the name of Simacai Management Board of Protection Forest.

However, the above areas have not been officially allocated in accordance to the statistic of natural resources and environment sector. Evidence on this issue, through the land inventory data conducted by Simacai Natural Resources and Environment sector (table 03, land statistic 1 January 2010), the total area of forestland that has been allocated for state management units (i.e. Management Board of Protection Forest and State owned Forestry Enterprise) across Simacai is only 3,498.03 hectares (forested land). While, in the data conducted by the forestry sector, the forestland area which is under the Simacai Management Board of Protection Forest is about 4,667.1 hectares. Thus, 1,178.07 hectares of forested land (4,667.1 minus 3,498.03) which are mentioned in the map for the current and planned three types of forestland to assign to Simacai Management Board of Protection Forest are still not yet registered into the natural resources and environment sector.

## Discrepancies in terms of land plots and land users

Results from the practical surveys and assessment showed that many areas which have been allocated for families and community in Lung San (according to the land registered book in 2006) are not presented on the map of forestland allocation made in 2006.

According to the data in Table 4, the discrepancy between the actual plot of forestland and that of the forestland allocation map is about 47%. Specifically, total land plots in the entire village under the review are 160. However, only 86 plots are presented on the forestland allocation map. In other words, 74 plots of forestland which have in fact been granted to families in Lung San are absent in the forestland allocation map.

**Table 4: Plot deviations in reality from the map of forestland allocation in Lung San in 2006.**

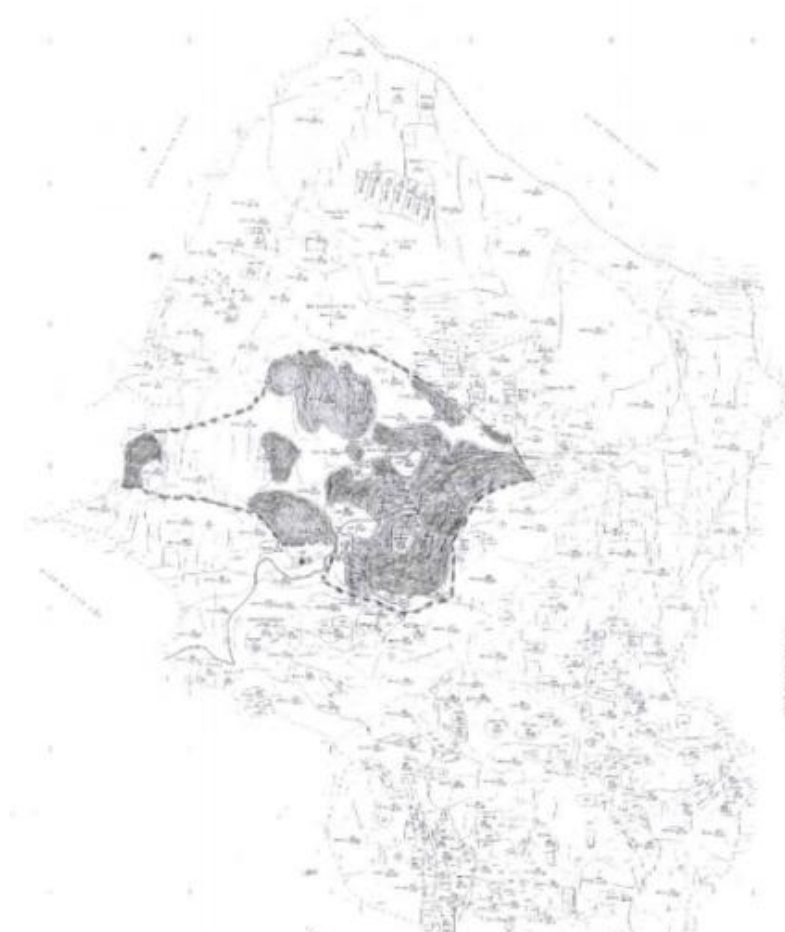
Total actual plots	Plots on the map	Plots not on the map
160 (100%)	86 (53%)	74 (47%)

This discrepancy is mainly expressed in two types. First, most of these plots are not mentioned on the forestland allocation map due to errors in mapping. Second, 11 plots which are presented in the forestland allocation map are overlapping with plots which belong to other users. This is also caused by the mapping faults. For example, some plots in the 'Dung' Mountain are drawn on the plot 83 which was

allocated to Mr. Hau Seo Pao. With the data reviewed above, according to the papers, some land users would lose part or all of their land to other users. In contrast, a number of users will have more land. Some cases, according to the forestland allocation in 2006, like Mr. Cu Seo Lua are entitled with two Red books, although they have only one parcel of forestland.

Furthermore, according to the map of forestland allocation (conducted in 2006) with scale at 1:10,000 for Lung Sui commune, Lung Sui has had different land users, including families, community, groups of families, Lung Sui Communal People's Committee and Simacai Management Board of Protection Forest. However, given the information and data in the map of the current status of forests with scale at 1:25,000 for Lung San village, Lung Sui commune, and map for the current and planned three types of forestland with scale at 1:25,000 for Lung San village, Lung Sui commune, the entire forestland area which was already allocated to families, groups of families, community and Lung Sui Communal People's Committee that is now entitled to Simacai Management Board of Protection Forest.

### **Forestland boundary overlapping amongst land users in Lung San village**



**Figure 6: Forestland boundary overlapping amongst land users in Lung San village (identified by local villagers and SPERI).**

When comparing the results of actual survey and assessment of forestland in Lung San village with information and data presented on the map of forestland allocation (1:10,000), map for the current and planned three types of forestland (1:25,000) and map of the current status of forests (1:25,000), WG and villagers have discovered some faults and overlapping of boundaries and area of Simacai Management Board of Protection Forest and other land users.

*Discrepancies on the map of forestland allocation 1:10,000*

According to data and information recorded on the map of the current and planned three types of forestland, total area managed by Simacai Management Board of Protection Forest is about 60.2 hectares (6 plots). The entire area of this is located in regions such as ‘Chong Che Te’ region (30 hectares), ‘Hang Cha’ (East south of Lung San) - the mountain behind the office of Lung Sui communal People’s Committee (30.2 hectares). However, according to the results of map of forestland allocation by Simacai District Office of Natural Resources and Environment made in 2006, this entire area was already allocated to families and Lung Sui Communal People’s Committee.

*Discrepancies on the map of the current and planned three types of forestland (1:25,000) and map of the current status of forests (1:25,000)*

The map the current and planned three types of forestland and map of the current status of forests represent the current state and positions of forestland plots. According to the information shown on the two maps, all forestlands are included in the management area of Simacai Management Board of Protection Forest. Meanwhile, as analyzed above, there are at least four land users in Lung San village. In other words, despite having been recognized by the State or community, the entire area of forest is now under management by Simacai Management Board of Protection Forest.

**Table 5: Summary of overlapping forestland users in Lung San village.**

Land users	No. users	No. plots	Area (Ha)	Area per plots	
				TK 132 LS (plots/area)	TK130 (plots/area)
Families	55	136	77,82	57 / 34,542	79 / 43,278
Community		4	19,14	1 / 8,01	3 / 11,13
Simacai Management Board of Protection Forest	<i>Entire forestland overlaps on areas allocated to families and community</i>				
<b>Sum</b>		<b>140</b>	<b>96,96</b>	<b>58 / 42,552</b>	<b>82 / 54,408</b>

According to the map of current status of the forests, the total area of protection forests in Lung San are scattered in different plots such as 163 and 160 of the mountain behind the Lung Sui communal People’s Committee; 121, 116, 113 and 77 of the ‘Dung’ mountain; and 165, 129, 144, 194, 205, 130, 142, 156, 135, 140 of ‘Chong Che Te’ region. The entirety of these areas is managed by Simacai Management Board of Protection Forest. Nevertheless, in reality, these areas were already allocated to families, community and Lung Sui communal People’s Committee in 2006.

As data shown in the table 5, of the 160 plots of forestland with an area of 313.9 hectares, and the 140 plots (87%) with an area of 96.96 hectares (31%) that have been allocated to households and community in 2006. But according to the map of current status of forests and map of the current and planned three types of forestland, these are mapped for Simacai Management Board of Protection Forest.



## Part 6: Discussion

Forestland allocation is a major policy of Vietnam since the early 1990s for effective and sustainable management and protection of forestland resources, contributing to support local people, particularly indigenous ethnic minorities in northern mountainous region to reduce and alleviate poverty, create stable livelihoods and promote economic development.

One of the most prominent efforts of the government is the gradual decentralization which changes from a centrally planned mechanism to assignment of the management rights of forestland protection to the local levels, especially households and communities. The major policies on forestland allocation and forest management which have been promulgated and implemented since 1992 such as the national program 327 program, Decree 02/1994/ND-CP and Decree 01/1995/ND-CP, Decree 163 / 1999/ND-CP, Decree 135/2005/NĐ-CP and so on. Ministry of Agriculture and Rural Development and the General Department of Land Administration - currently become Ministry of Natural Resources and Environment issued guidelines at the circular 61/2000/TTLT-BNN-TCDC for allocation and lease of forestland, and granting land use right certificates (Red books).

Since 2003, the Government issued Decree 181/2004/ND-CP on guiding the implementation of the Land Law (enacted in 2003), Decree 23/2004/ND-CP on guiding the implementation of Law on Forest Protection and Development (enacted in 2004). The most prominent feature of these legal frames is the addition to recognize the communities, villages or hamlets as one of the actors to be entitled to manage and use forestland. On that basis, there have been many detailed guidelines on the implementation of forestland allocation to the community/village, for example Circular 38/2007/TT-BNN, Joint Circular 07/TTLT/2011-BNN & BTN&MT on guiding the execution of forest allocation associated with forestland allotment. Such legal documents have contributed to make the Law on Land in 2003 and the Law on Forest Protection and Development in 2004 more complete in ensuring the rights and obligations of the users to not only land, but also forest resources.

Besides the above-mentioned policy achievements, through a case study in the H'mong community in Lung San village, Simacai district, into the implementation of forestland allocation, mapping and planning in reality has exposed some shortcomings and challenges.

Firstly, the management and use of forestland by the land users in Lung San village are confronted with the following challenges :

- i. Forestland boundary overlapping amongst the land users i.e. between Simacai Management Board of Protection Forest, families, groups of families and community.
- ii. Conflicts over the rights in forestland management and use between Simacai Management Board of Protection Forest, families, groups of families and community.
- iii. The same plot of land belongs to different land users i.e. between Simacai Management Board of Protection Forest, families, groups of families, community and communal people's committee.
- iv. Those who are already allocated forestland, but have not yet received land use right certificates.

Second, the lack of cooperation, not inheritance and overlapping on criteria on forestland classification, demarcation and mapping between the natural resources and environment department and the forestry department revealed several problems in the reality, including deviation in mapping scales (map of forestland allocation, map of current status of forests and map for the current and planned three types of forestland), differences between the positions of allocated forestland given on the map and reality, the



following maps (e.g. map of current status of forests and map for the current and planned three types of forestland) negating the results of the previous maps such as map of the forestland allocation. This is the main cause leading to the above mentioned situations.

Third, the deficiency of agricultural production land is an urgent problem for maintaining the life of the villagers in Lung San. Besides the population growth, as analyzed above, there are two additional main reasons. First, it is the overlapping boundary of forestland management by Simacai Management Board of Protection Forest on the areas of land users in Lung San village. Second, the agricultural production land of villagers is classified as protected forest or production forest where cultivation is prohibited.

Fourth, it may be said that, Lung San represents 96 villages across Simacai regarding the issues of forestland allocation, mapping and natural resources planning. Therefore, the Simacai authorities need to have policies to expand or revise the forestland boundary (demarcation and allocation), assess the forest status (forested areas, forest reserves) for the allocated forestland areas for different users under the Decree 02/1994/ND-CP and Decree 163/1999/ND-CP. Then, the district needs to resolve the overlapping claims and forestland disputes between users as a basis for granting land use right certificate (if not already), and to ensure that the actors, especially households and communities have full access to policies on forestland benefits. The overlapping areas into the Simacai Management Board of Protection Forest need to be withdrawn by the provincial authorities; then reallocated to their users according to Decree 200/ND-CP and directives 38/2005/CT-TTg.

Fifth, pursuit to the National Targeted Program on New Rural Construction during the period from 2010 to 2020, Simacai district People's Committee needs to have policies to review and plan in order to have enough forestland for reallocation to communities/villages, clans, families and groups of families, with following steps:

- a) Review the legal status of different categories of forestland, accordingly identify the proper legally entitled or traditionally owned land users/managers for specific type and plots of forestland, i.e. households, groups of families, communities, management board of protection forests and communal people's committee. This activity should be clearly identified in the field in order to know how much forestland capital is available to allocate for the local communities/villages and villagers. Two solutions are suggested for the forestland managed by local communities, clans, groups of families, households under the management contract with Simacai Management Board of protection forest, as follows:
  - (i) The forestland which is not under the official management of the Management Board of Protection Forest (not in the areas of assigned decisions) may be considered as under the management of communal People's Committees, then reallocated to local communities/villages, clans, households and groups of families;
  - (ii) The forestland which is officially assigned to Management Board of Protection Forest (included in the areas of assigned decisions), is at first withdrawn by the provincial People's Committee, then assigned for the district People's Committee to allocate for local communities/villages, clans, groups of families and households.
- b) Reviewing and proposing the provincial People's Committee to withdraw forestland under the administration of Management Board of Protection Forest to reallocate for district People's Committees so as to create more forestland reserve to meet with the needs of local communities, families, groups of families and clans. These areas are then planned under the category of

production forest in accordance with the Directives 38/2005/CT-TTg of Prime Minister on reviewing and planning the three types of forest;

Sixth - related to the relevant actors prioritized to allocate forest in association with forestland allotment under Joint Circular 07/TTLT/2011/BNN-BTN&MT. Currently, the total forestland planned for forestry per household in Simacai is low, only about 1.4 hectares per household. The bigger forestland average per household in Nan Xin and Lung Sui communes are only around 2.3 hectares. Meanwhile, most forestland is currently under the management of Simacai Management Board of Protection Forest. Therefore, it is possible that the forestland withdrawn in a maximum from the Management Board of Protection Forest in line with the Degree 200/2004/ND-CP also does not meet the needs of people and communities. Therefore, the allocation plan should give priority to forestland allocated to local communities/villages, clans, families and groups of families. Depending on the existing available and withdrawal forestland in different communes, following options are recommended for consideration:

- a) If the existing forestland reserve could ensure the minimum of 2 hectares per household, forest allocation in association with forestland allotment for local users such as families, groups of families, clans and communities should be implemented. This could provide maximum opportunities for local actors to approach the government policies on poverty alleviation in relation to forestland, particularly the Resolution 30A/2008/NQ-CP, Resolution 80/2011/NQ-CP, and the policies on forest economic development i.e. Decision 147/2007/QĐ-TTg and Decree 99/2010/ND-CP;
- b) If the existing forestland reserve remains low or not available, the local communities should be prioritized in the process of forest allocation. The facts show that forestland which is allocated for local communities are in this circumstance better managed. Meanwhile, given the low forestland reserve, if there was not sufficient forestland to allocate for households, several risks in the forms of conflicts and rivalry amongst families within the community due to unfair resources allocation could occur.

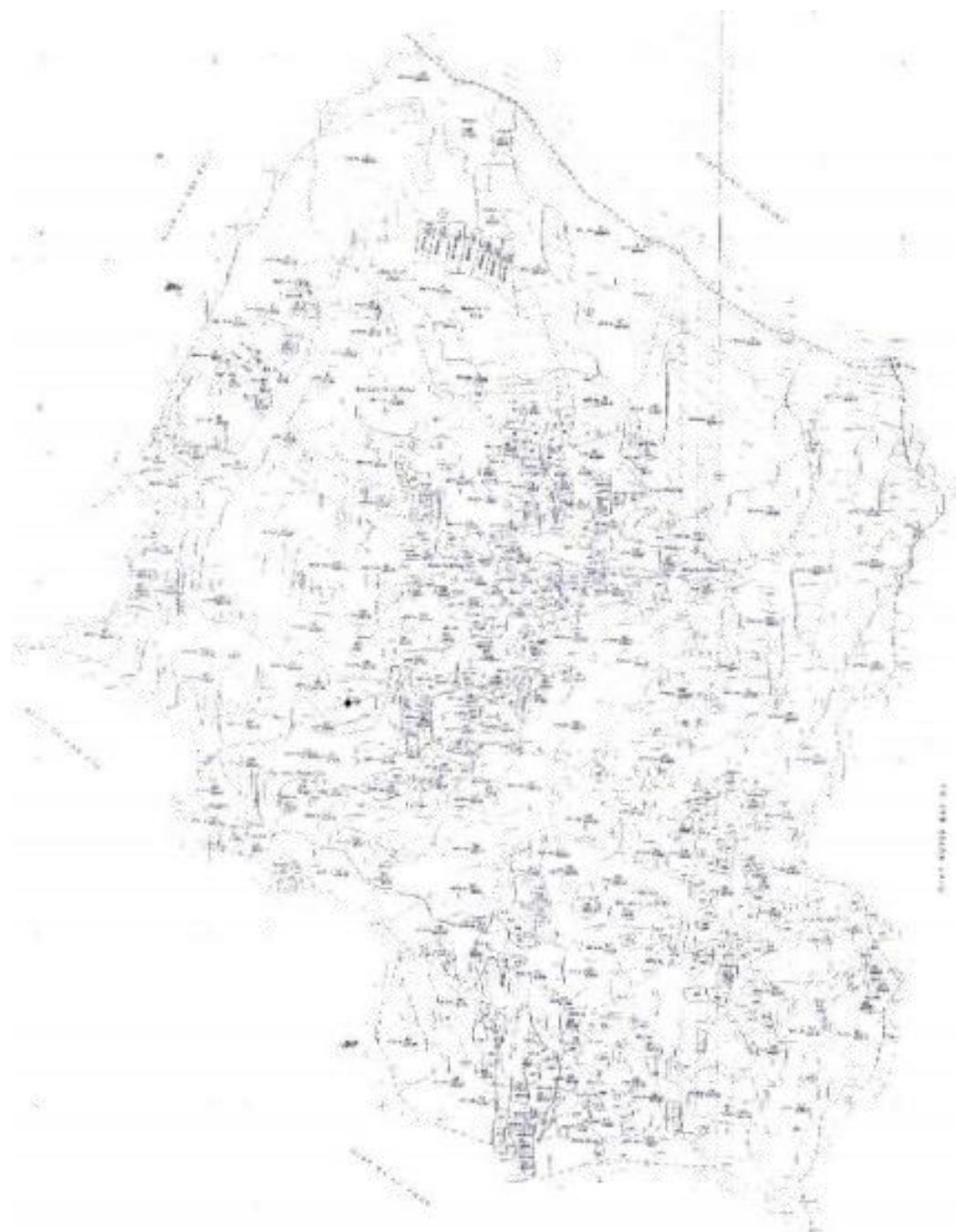
Seventh, in Lung San village particularly and Simacai district as a whole where there is a diversity of indigenous ethnic groups along with the parallel practices for the notion of 'ownership', as well as modes of land management either 'self-admitted' by the customary laws or 'recognized' by the law, there appears several conflicts and claims. Therefore, if the forestland allocation is merely a criterion of imposing the legal framework, technical criteria and 'expert's method, that lack of respect and skillful integrations of the factors regarding psychologies, cultures and customs of indigenous ethnic groups, local landscapes, as well as promoting full participation and responsibility of local actors, it is rather hard to get the expected results. Sometimes, this way of doing things can cause additional conflicts and disputes in local communities.

Eighth, the concept of community/village mentioned in the Law on Land in 2003 - *'The residential community consists of the Vietnamese community living in the same area i.e. village, hamlet or alike residential unit which has the same customs or share the same kinship'*, or in the Law on Forest Protection and Development in 2004 - *'the village/community includes the entire families, individuals who live in the same village, hamlet or alike residential unit'* - is relatively narrow. If these definitions are mirrored through the case of Lung San particularly, and 96 villages in Simacai in general, where there are at least four sets of community such as village/community, clan, groups of families and families, it is rather incomplete. Therefore, the State should have further policy studies in order to set up legal framework more appropriate for the tendency and practices of socio-economic development in indigenous ethnic minority communities in remote mountainous areas.

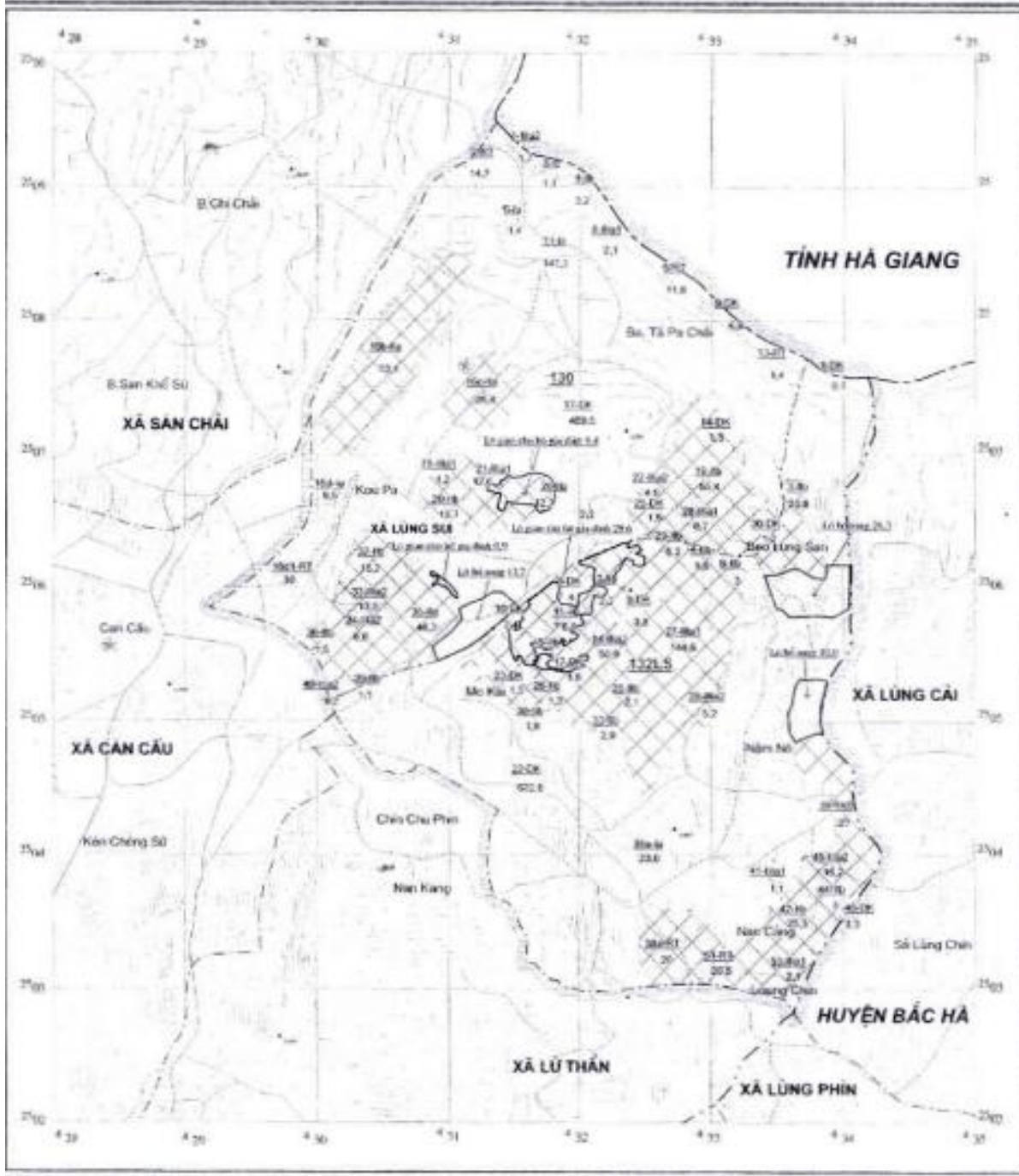
Ninth, the traditional community cultural forests in Lung San have not been formally recognized in practice as well as by relevant legal documents. The Land Law in 2003 specifies that the residential communities are not allocated production forestland (Article 75) and protection forest (Article 76). Meanwhile, Article 77 specifies that special-use forests are assigned to organizations. Then, organizations may make short-term contracts with households who lack the ability to move out of the special forest areas, so they can remain there to protect the forest. In fact, most of the spiritual forests, sacred forests and forests for water resource preservation of local indigenous ethnic minority communities are located in the special or watershed forests. Therefore, it is necessary to have specific policies or guidelines on the recognition of the sacred /spiritual forests of local communities. This type of forestland must be seen as small-scale special forest. These forests are clearly determined and categorized according to the (local) knowledge system and traditional customary law of mountainous indigenous ethnic minority communities. Forests are vital space, traditional cultural space. Forest protection by the spirits and customary laws is the great strength of local communities because it is tied to the consciousness and voluntary behaviors of all community members. Furthermore, the recognition, respect and promotion of the community capitals in forms of natural resources and cultural spaces would contribute to implement effectively the government policy on cultural identity preservation and promotion.

## Annex

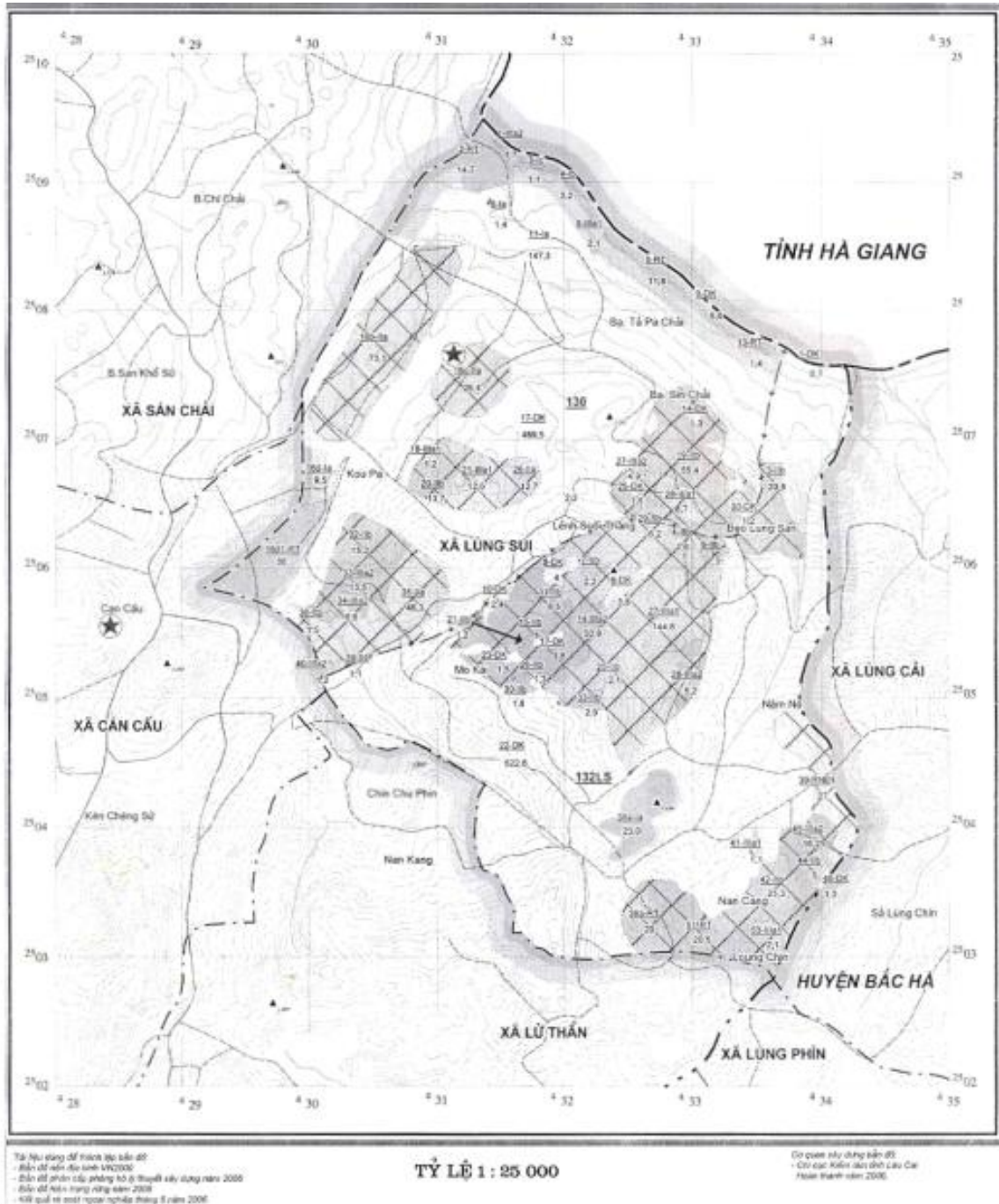
**Annex 1:** Map of forestland allocation with scale at 1:10,000 for Lung San village, Lung Sui commune, Simacai district, Lao Cai province (conducted in 2006).



**Annex 2:** Map for the current and planned three types of forestland with scale at 1:25,000 in Lung San village, Lung Sui commune, Simacai district, Lao Cai province (conducted in 2008)



**Annex 3:** Map of the current status of forests with scale at 1:25,000 for Lung San village, Lung Sui commune, Simacai district, Lao Cai province (made in 2008) (Decision 614/QĐ-UBND of the Lao Cai Provincial People's Committee dated 15/3/2007)





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- # 2011, Given the practice of slow and inconsistent implementation of forestland allocation, Ministry of Agriculture and Rural Development (MARD) and Ministry of Natural Resources and Environment (MONRE) issued the joint circular 07/2011/TTLT-BNNPTNT-BTN&MT dated 29/01/2011 on guiding forest allocation and lease associated with forestland allocation and lease. Resolution of the above difficulty is also an advantage for many users to compete for land acquisition, and benefit from forests. Clearly, enterprises, elites and well-off actors will have more advantage in this process, if the priorities of local communities and people are not clearly confirmed in the legal framework. The issuance of this Circular is also an opportunity to formalize the rights and obligations to the local communities while ensuring the right to livelihood, religion, co-responsibility and participation of local people.

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