

*PLANTATION WATCH*

# *An Analysis of FSC Certification of Oji LPFL*

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## **Acronyms**

ADB - Asian Development Bank  
BGA - Brierley, General Finance, Advanced Agro (a joint venture company)  
CSR - Corporate Social Responsibility  
EIA - Environmental Impact Assessment  
FMU - Forest Management Unit  
FSC - Forest Stewardship Certification  
GIS - Geographic Information Systems  
GoL - Government of Laos  
HCVF - High Conservation Value Forest  
LFA - Land and Forest Allocation  
LFTU - Lao Federation of Trade Unions  
LPFL - Lao Plantation Forests Ltd.  
LPRP - Lao People's Revolutionary Party  
LUP - Land Use Planning  
MAF - Ministry of Agriculture and Forestry  
MONRE - Ministry of Natural Resources and Environment  
NGD - National Geographic Department  
NRA - National Regulatory Authority for UXO/Mine Action Sector in Lao PDR  
NTFP - Non-Timber Forest Product  
RTE - Rare, Threatened and Endangered  
UXO - Unexploded Ordnance  
WWF - World Wide Fund for Nature

## **Executive Summary**

Oji Lao Plantation Forestry Co. Ltd (Oji LPFL) is a joint venture plantation project between the Government of Laos (GoL) and Lao Plantations Holdings Ltd, a holding company of which Japanese owned Oji Paper holds a majority share. In August 2013 Oji LPFL announced that it has received Forest Stewardship Certification (FSC) for their plantation operations in Bolikhamxay and Khammouane Provinces, in Central Lao PDR (Laos). The vast majority of this plantation of eucalypt and acacia species is undertaken under a land concession model where the government grants land considered to be State land to the company. This concession model is highly controversial in Laos for failing to register the traditional ancestral lands and forests of rural forest dependent communities.

This report examines the Oji LPFL Public Summary Report issued by the FSC auditor, SGS Qualifor and comments on the accuracy of the statements made in the summary document, based on the authors own experience working in the field in Hinboun and Bolikhamxay District and following interviews with stakeholders and also thorough review of existing literature on Oji LPFL's plantation operations.

The report finds numerous inaccuracies, false and / or misleading statements contained in the public summary that present an overly positive image of the Oji LPFL plantation operations and that do not address many issues that have already been identified by other authors. Primarily among these are the claims that Oji LPFL plantations have only been conducted upon degraded land and that no forest clearance has taken place as a result of Oji LPFL plantations. The report finds significant evidence for large scale forest clearance conducted by the Government of Laos (GoL) immediately prior to preparing land for plantations operations.

The Public Summary document issued by SGS Qualifor also fails to address significant customary tenure issues in communities in the plantation area despite customary tenure existing under the law and also being a controversial issue in the socio-political context of the one party authoritarian State of Laos. Despite there being significant reporting of grievances within the target communities related to the loss of land and forest the SGS Qualifor report finds no grievances recorded. In this sense this report questions the reliability of the auditor SGS Qualifor in undertaking due diligence.

This report also raises serious questions regarding the welfare of Oji LPFL employees due to the presence of UXO in plantation areas although no mention is made of UXO in plantation areas in the SGS Qualifor report. A case is presented in this report of a former Oji LPFL employee stepping on UXO in an Oji LPFL plantation site although this case also does not feature in the auditor's report.

In general this report finds that the Public Summary document by SGS Qualifor is insufficient and recommends that FSC withdraw certification of the Oji LPFL plantation and conduct its own independent investigation free from the influence of the GoL into various issues raised in this report.

## Introduction

The Lao Plantation Forest Co. Limited (LPFL), commonly referred to as Oji LPFL, is a joint venture industrial tree plantation project in Central Lao PDR (Laos) with a 50,000 ha concession agreement to plant and harvest Eucalyptus and Acacia for pulp production over a period of 50 years. This report was initiated at the request of Plantation Watch, following the announcement that Oji LPFL had received Forest Stewardship Certification (FSC) in August 2013. The objective of this report is to document evidence of non-compliances with FSC standards in FSC certified areas of Oji LPFL and the negative impacts this certified area and the company are giving/have given to the local communities and the environment. This is done by examining the FSC principles and criteria<sup>1</sup> point by point and reviewing the public summary report of the FSC certification for Oji LPFL written by FSC auditing agency, SGS Qualifor. This summary is referred to throughout this report as SGS, 2013. The author has not reviewed every criterion of FSC, rather only those criterion that are applicable to Oji LPFL and with which there is a discrepancy between what is written in the FSC public summary and what this author has witnessed on the ground conducting his field research and also from other available documentation of Oji LPFL's plantations in Laos.

The author of this report has 10 years experience working on community forestry and land rights issues in Southern Laos and has undertaken extensive research in Hinboun district on the operations of Oji LPFL. Most of this research was undertaken between 2004 and 2008 when Oji LPFL first began operations in Laos. While this is a limitation of the study, plantation operations undertaken by Oji LPFL during this period are still relevant to FSC certification because the 22,231 hectares given FSC certification incorporates LPFL plantation areas undertaken during this period.

The results of this author's research into Oji LPFL operations were incorporated into a Master's thesis entitled *Plantations, Deforestation and Forest Sector Aid Interventions: An analysis of Japanese plantations as foreign direct investment in Central Lao PDR*. The thesis was submitted to Macquarie University, Sydney, Australia for examination in November 2011. Although some new material is also presented in the report, much of the contents of this report are based on that research and referred to throughout this report as Hunt, 2011.

The original concession area of Oji LPFL was located in Pakkading District, Bolikhamxay Province, and Hinboun District, Khammouane Province, in Central Laos, however because of a lack of available land located in this area, actual plantings now go well beyond these 2 districts (Hunt, 2011: p.117). A conglomerate of Japanese companies with Oji Paper at the helm purchased all the shares of the previous owners, BGA (itself a conglomerate of different companies) in February 2005. This amounted to 85% of the total shares of the company. The other 15% of the shares in Oji LPFL are owned by the Government of Laos, who were able to gain a 15% equity in Oji LPFL for no cost given the proviso that the government of Laos be responsible for the allocation of land under the project (Midgley, 2006: Annex4, p.77). This is an important point because of the controversy surrounding land acquisition under a concession model in Laos.

The allocation of large scale land concessions has been a highly controversial issue in Laos over the past decade, so much so that the Government of Laos has already issued several moratoriums on land concessions (see Hunt, 2011: pp.45-51). This controversy has been around the leasing of land to companies by government agencies without regard for the livelihoods of forest dependent peoples and upland rotational farmers. In the case of Oji LPFL the government has 15% equity in the company with the specific requirement that the government will be in charge of allocation of land. Hence in terms of FSC certification, the land acquisition process undertaken by the Government of Laos for Oji LPFL also needs to be examined as the Government of Laos holds a 15% stake in the company and therefore as a co-owner, also benefits from the issuance of FSC certification.

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<sup>1</sup> FSC standards FSC-STD-01-001 (version 4-0)

## FSC Principles

### **FSC Principle #1: Compliance with laws and FSC Principles**

*Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory, and comply with all FSC Principles and Criteria.*

#### 1.1

*Forest management shall respect all national and local laws and administrative requirements.*

### **Clearing of Dense Forest for plantations 1996 Forest Law, Article 13**

The summary report made by SGS Qualifor states that the audit team found no objective evidence of non-compliance with relevant laws. However, in studying the evidence I conclude that breaches of Lao law have taken place in the course of establishing the Oji LPFL operations in Hinboun and Pakkading districts. Primarily among these is the breach of the 1996 Forest Law (superseded in December 2007) in which article 13 explicitly states;

*It is forbidden for individuals or organisations to use well developed natural forest or fallow forest, which can regenerate naturally, for tree planting. (GoL, 1996)*

In the summary report it is stated repeatedly that Oji LPFL plantations have been conducted only on degraded lands since operations began in 2004 (see especially compliance statement 6.10). The reality is that there is ample documented evidence prior to December 2007 clearly showing that both dense forest and fallow forest has been cleared prior to the planting of Oji LPFL plantations (Barney, 2007; Hunt, 2011). Hunt, 2011 documents several cases of the clearing of dense forest in Oji LPFL sites in Chapter 4.3 of their thesis. Hunt records case studies from 13 villages across Pakkading and Hinboun districts. Barney, 2007 has very detailed documentation of the loss of natural dense forest that has taken place in Pak Veng village in 2006. These reports are publicly available but SGS's assessors (and FSC) appear unaware of them. I will provide further examples later on in this report under principle 6.10 and 10.9.

### **Failure to clear UXO from plantation areas, NRA notification #093**

According to Notification #093 of the National Regulatory Authority for UXO/Mine Action Sector in Lao PDR, development projects, (which include commercial development projects such as plantation operations), are required to *survey and clear (UXO) before implementing projects* (NRA., 2012:Clause 1). Some Oji LPFL plantations in Mahaxay district, Khammouane Province contain high UXO contamination and in this regard Oji has a responsibility to implement this notification. A total of 6 villages are noted in Oji LPFL website as having undergone UXO clearance, these being: Elan, Phondeng, Kava, Thongkouang, Hainoua and Manh villages with a total area of 811.7ha having been cleared (Oji LPFL, 2014). Yet this author has obtained reports and maps from former Oji LPFL staff stating that there are potentially another 4 villages that contain heavy UXO contamination namely; Natangchay, Kacham-nyai, Kacham-noy and Phova villages together representing a total land clearing area of 592.5 ha according to these 2009 maps. The Oji LPFL plantation maps from these villages (see Annexes) clearly show US bombing data and include GPS points made by Oji LPFL of actual UXO observed in the plantations and clearance areas of these 4 villages. While these four villages were all planted with Acacia and Eucalypt trees by Oji LPFL before 2010, well before this law came into effect, the fact that these 4 villages are not mentioned on the LPFL website in terms of clearance raises questions as to whether the company has actually cleared these 4 plantation areas of UXO.

In addition, despite the importance of the issue of UXO clearance with regard to FSC criterion 1.1 and 4.2, there is no mention made in the auditor's report of UXO contamination or of any clearance operation. In addition it can be seen in a photograph on Oji LPFL's website that clearance operations have been undertaken post planting. While the clearance operations have at least taken place before the Notification 093/NRA came into effect, it is still concerning that Oji LPFL only saw fit to clear UXO after plantations have been established given the danger that UXO potentially post to staff and contractors who are preparing land and planting seedlings. This issue will be addressed more under criterion 4.2.

Although it is not specifically stated in the NRA notification whether or not the notification applies to existing development projects, it is also noted that there is no clarification in the auditor's report about the possibility of the existence of UXO inside plantation areas and the potential for conflict with NRA notification #093. This is a clear weakness of the auditors' report.

**Figure 01 and 02: Oji LPFL staff photographing cluster munitions inside plantation areas (Figure 01 in Khacham noy plantation, Figure 02 in Phova plantation)**



Oji LPFL, (2009a)

**Figure 03: BLU Cluster bomb dispenser in area allocated for planting in Phova plantation.**



Oji LPFL, (2009a)

**FSC Principle #2: Tenure and use rights and responsibilities**

*Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.*

2.2

*Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.*

**Customary Tenure**

Land and forest tenure rights for agrarian communities are a highly contentious issue in present day Laos. Land concessions have come under criticism for ignoring village customary forest and land tenure rights and for depleting the resources of forest dependent communities. Over the last decade land concessions for agri-business have literally exploded in Laos, both in terms of the total number of projects implemented, and the area planted as well as the controversy surrounding them. Agri-business investments that operate under a land concessions model (such as Oji LPFL has in the plantations issued with FSC certification) have been documented destroying high value forest and having a severe impacts on village livelihoods (see Phouthonesy, 2006; Hunt, 2006; Schumann et al, 2006; Obein, 2007; Noupanh, 2009; NLMA, 2009). The situation has warranted such critical attention that the Government of Laos (GoL) has issued several moratoriums on land concessions and presently has a total moratorium on new Eucalyptus and rubber investments (see Vientiane Times, 2007; 2009a; 2009b). In an attempt to resolve the ongoing problems related to land concessions, the National Assembly of Lao PDR is in the process of drafting a National Land Policy partly in response to many of the land tenure problems that have emerged following the widespread introduction of land concessions.

Despite the ongoing critical discourse surrounding land concessions in Lao PDR, both Oji LPFL and SGS Qualifor have totally neglected to mention any of this in relation to land tenure or customary

rights and what potential implications this has for the project. The auditor states in the Summary FSC certificate that;

*There are no sites where tenure or use rights by the local communities have been legally or traditionally identified in the [sic] scope.*

This statement would appear to be totally false. Customary forest rights are defined in Article 42 of the 2007 Forest Law with all rural communities have these rights;

*Customary utilization of forest is the use of forest and forest products that has been carried out for a long time in accordance with laws and regulations. The State allows to use trees and to harvest non-protected species of forest products for household consumption with the condition that such customary use shall not cause adverse impacts on forest, forest resources, environment as well as inflicting on rights and benefits of other individuals or organizations.*

It is certainly clear from case studies provided by Hunt, (2011) and Barney, (2007) from the Hinboun and Pakkading areas that communities also regard forest areas surrounding their village as their traditional lands, and are widely utilised by communities. This is even more so in villages around the Hinboun River where villagers engage in upland dry rice production under informal customary ownership systems because of the damaged caused to their paddy fields from the nearby Theun Hinboun hydro electric dam (Barney, 2007). It is clearly false to say that use rights have never been traditionally identified.

In addition to these customary rights under the law, many villages, particularly in Hinboun district have already undergone Lao government Land Use Planning (LUP) programmes that formally allocate land and forest to villagers for legal recognition. Many of the LUP programs date from the late 1990s and early 2000s and are clearly marked at the front of villages. However, as Hunt, 2011 shows in his Geospatial analysis of LUP maps in Hinboun district these LUP maps and associated formal use rights have been totally ignored by Oji LPFL. Hunt notes that across 19 villages almost every type of allocated forest and land category has been utilised for Oji LPFL plantations development including agriculture land, future agriculture land, conservation forest, production forest, regeneration forest, protection forest, secondary forest and grasslands (Hunt, 2011:188).

The assertion that no customary use rights have been identified is also false because Oji LPFL would no doubt recognise the de facto reality in Laos that villagers maintain an extent of customary control over lands within their village boundaries. Oji LPFL is required to get the signature of the headman of each village upon which plantations are established, so the statement that there are no situations of customary tenure is totally incorrect.

#### Free and Prior Consent

Principle 2.2 also states that such use rights shall only be overturned in cases where local communities have delegated control “with free and informed consent”. Given the socio-political context of Laos, (a one party State controlled by the Lao People’s Revolutionary Party, that does not allow open public criticism of the government or party) the question should be asked about whether the FSC principles of “free and informed consent” are actually possible anywhere in the country. Hunt, 2011 has documented several serious cases of coercion including one where villagers in a village in Hinboun district were visited by district government officials and Oji LPFL staff on 4 separate occasions requesting use of their conservation forest and other forest lands for plantations.

In addition there have been reports of villagers being coerced or otherwise misled through over emphasis of the benefits of the plantations without any regard for risks. Hunt cites a government

official in another village in Hinboun district as saying with regard to Oji small holder plantation schemes “Who wants to have money?” as his main selling point for the Oji LPFL smallholder plantations (Hunt, 2011:211). This author has also received reports from another international agency working in Mahaxay district, about villagers that have been manipulated by Oji LPFL to undertake smallholder cropping and that villagers don’t really understand the scheme (Anonymous, pers.com. 2014).

One could conclude from these multiple sources that there have been clear violations of the FSC principle of free prior consent when villagers have had their customary or formal land use rights land utilised by the company.

*Principle 2.3: Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.*

#### Failure to note existing complaints that have arisen

As we have seen above there have been numerous disputes between local communities and Oji LPFL relating directly to tenure issues. The auditor's report states *No disputes over tenure claims and use rights were reported.*

It would seem from the cases documented by Hunt 2011 and also Barney 2007 that there are a high number of cases related to land tenure issues inside Oji LPFL plantations. Questions should be raised as to why independent researchers and rural development projects are able to find so many examples of tenure issues and yet nothing is formally recorded in Oji LPFL complaints registers. It should also be noted that the word from consultants working closely with Oji LPFL show that the company has now entirely abandoned the concession model for land acquisition as a failed model and are now trying to undertake small holder eucalyptus production for all new plantations (Midgley, pers.comm. Nov, 2013). It is likely that the reason for the abandonment of the concession model is directly related to unsettled questions of land tenure, and the inability of the company to secure any more village lands under concession because of village refusal to allow more concessions.

We should also keep in mind the few reports that have made it out of Oji LPFL areas are largely owing to some scattered independent researchers and rural development projects. Given the highly secretive nature of the Lao government and the necessity to have government minders whenever going into rural communities, it is not easy to gain an good understanding of ongoing tenure claims in Oji LPFL communities, and the few complaints that do exist are possibly only the tip of the iceberg. A proper and independent analysis of tenure claims, free of government or company interference is warranted to ascertain the exact magnitude of existing claims within Oji LPFL plantations.

#### Problematic complaints procedure

On the other hand, it could also be that the complaints mechanism developed by the company is insufficient for dealing with tenure issues. The auditor's report also notes that a “documented system” has been established for complaints processes, yet there is no further indication of how such a system is supposed to work. When one examines the way in which grievance mechanisms work in Laos and the way in which Oji LPFL operations are run, it is not entirely surprising that tenure claims are not coming through any grievance process.

The nature of the joint venture between Oji Holdings and the Lao Government is that the Government of Laos holds a 15% share in the Oji LPFL through its acquisition of land. Yet the

typical grievance process in Laos is that the headman of a village raises any complaint of the villagers to the district government. However, this is typically the same district government officials that are bringing the company to the community in the first place (Molina, 2011:p.24). As such it is highly likely that government officials may hesitate from formalising the tenure complaints of villagers when they themselves have been involved in the acquisition of village land.

In addition Hunt (2011) has pointed to some mechanisms operating within Oji LPFL operations that likely act as another mechanism to stop complaints from being formalised. One of these is the regular monthly payments that are made to village officials – in 2007/8 typically the headman and village party secretary were paid between 500,000-700,000 kip (US\$65-\$90) (Hunt, 2011: pp 168-9). Likewise Hunt notes that monthly payments to both district and provincial government officials are made, ostensibly as a per-diem payment, for being on Oji LPFL committee (Ibid: 168). When people in positions of authority such as village headmen, and district and provincial government officials are receiving regular monthly payments from the company, obviously there is a serious conflict of interest and it is entirely predictable that any grievance mechanism will be corrupted. The company should release its grievance mechanism for independent analysis. In addition regular monthly payments to senior officials whether in the village or district / provincial government should be halted.

### **FSC Principle #3: Indigenous peoples' rights**

*The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.*

According to the auditor's report Oji LPFL regards none of the target communities as having "indigenous people". The concept of "indigenous people" is highly contentious in Laos. Although the country is estimated to have 33% of the population as ethnic minorities many of whom cannot speak or read Lao, and who maintain spiritual connection to their land and forests, the Government of Laos simply claims that in fact there are no indigenous people in the country. No doubt Oji paper is using this definition of the government to claim that there are no indigenous people in the target area. Yet what is clear is that there are many ethnic minority groups inside Oji LPFL target areas. In fact Oji LPFL's own baseline data from their 2006 Social Guidelines report states that Austro-Asiatic tribes make up 5% of the population in the target area, and Sino-Tibetan Tribes make up 4%, a total of 9% of the population as being from the non-dominant ethno-linguistic lowland Lao (Lao Lum) grouping (Oji LPFL, 2006:p.32). Although Oji LPFL takes advantage of the Lao governments' obfuscation of the word indigenous, multilateral donors such as the ADB and the World Bank, apply indigenous safeguards on many of their projects as they consider many of the ethnic groups in Laos to fit their organisational concepts of "indigenous people" (e.g. Nam Theun 2 hydroelectric dam in Khammouane Province).

Likewise the FSC definition should have been used when deciding whether indigenous people exist within the plantation sites<sup>2</sup>. Under this FSC definition, ethnic minorities in Oji LPFL target communities could easily be referred to as "indigenous". Hence there is a real need to review Oji LPFL compliance with Principle 3 in its entirety.

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<sup>2</sup> **Indigenous peoples:** "The existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement, or other means reduced them to a non-dominant or colonial situation; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form a part, under State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant." (Working definition adopted by the UN Working Group on Indigenous Peoples). (FSC, 1996:p.11)

### 3.3

*Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognized and protected by forest managers.*

The auditor's report states that even though there are no indigenous people within plantation areas, that Oji LPFL still undertakes principle 3.3. Hunt (2011) documents a case where an ethnic minority group is moved into Phonethong village in Bolikhamxay, an already established village of ethnic majority Lao. Hunt documents how this group was having forest directly behind their houses cleared also the clearing of forest resources including the loss of valuable cardamom plants that villagers were able to sell at local markets and raise up to \$50 per collector per year. Hunt also records the villagers as complaining that Oji LPFL ignored their requests to give them 100 meters of buffer space between their houses and the plantations, in order that they may be able to establish houses for new families. It was only after a report on the situation was handed to Oji LPFL in late 2006 that such land was made available. Other cases reported by Hunt and Barney also document the loss of economic NTFP resources (Phonsaart, LaoKha, and PakVeng). In the case of Phonthong village we find that areas of economic interest have been cleared. Hunt also documents through the use of Geospatial analysis that areas of forest with religious value have been cleared in Nongluang and Phonsavang villages (Hunt, 2011: 188).

Given the dependence of many rural villages on natural resources such as non-timber forest products (NTFP) it is feasible that there has been great economic impact on villagers in terms of the loss of edible and saleable food products. Again the auditor's report makes no comments of the cases recorded above, and we can only speculate as to how many cases of serious resource loss exist within Oji LPFL plantation areas.

#### **FSC Principle #4: Community relations and worker's rights**

*Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities.*

### 4.2

*Forest management should meet or exceed all applicable laws and/or regulations covering health and safety of employees and their families.*

As has been covered previously there are serious concerns with the contamination of UXO in certain plantation sites in Mahaxay district. On its website Oji LPFL states that 6 villages have been cleared of UXO over an 8 month period between February and October 2011. However, this is already at least two years after Oji LPFL identified the presence of UXO in cleared and planted areas (See Annex 1). Indeed we can even observe on the Oji LPFL website that clearance operations were taking place after plantations were already well established (see Figure 04). As previously stated in Criterion 1.2, there are also still very real questions that need to be answered by the company as to whether there are still plantations in Mahaxay where UXO has not been cleared.

While the author is not aware of any specific law (apart from the aforementioned NRA notification 093) that details labour conditions in relation to UXO clearance, it seems to be that the underlying philosophy enshrined in Criterion 4.2 is being ignored by having plantation areas contaminated with UXO and having labourers work in those areas. Even if Oji LPFL has now cleared UXO in all plantation areas in Mahaxay district, the wilful disregard for the safety of employees that the company has displayed by not undertaking clearance prior to preparing land is a clear violation of

FSC criterion 4.2, not to mention other international frameworks. In this regard, this author has uncovered a case where an expatriate employee in the position of Operations Manager at Oji LPFL actually stepped on an unexploded cluster munitions whilst working for the company in mid 2009. While the munitions did not explode the employee suffered extreme stress related to this incident he reported to me in an interview that his heart rate dropped to 38 and he was forced to take leave for stress for at least a week returning to his home country. No report of this incident is mentioned in the auditors' report.

The Oji LPFL statement against criterion 4.2 makes no mention of UXO contamination in its plantation areas or the danger to which employees and contractors of the company have already been exposed and may also potentially continue to be exposed. It is a shocking omission raises questions about the commitment of the company to the adherence to principles of FSC.

**Figure 04: UXO clearance operations in established Oji LPFL plantations in Mahaxay District**



Source: Oji LPFL, 2014

#### 4.3

*The rights of workers to organize and voluntarily negotiate with their employers shall be guaranteed as outlined in Conventions 87 and 98 of the International Labour Organisation (ILO).*

The auditor's report states in relation to this principle that

*Although there is not any union of forest workers who are working in the forests, workers' rights to organise is [sic] confirmed at the relevant national legislation. Forest workers can negotiate with LPFL on their working conditions through their organizations.*

Yet it is a well documented fact that the Lao Federation of Trade Unions (LFTU) - to which the auditor's report refers - is neither free nor independent and is bound by an overall absence of collective bargaining (Fry, 2006; ICTFU, 2004). The LFTU is referred to in "revolutionary" parlance as a "mass organisation" but for all intense and purpose is a government run body. Fry (2006) writes;

*As an official 'mass organisation', the LFTU's role was 'to help mobilize the people to build socialism and defend the nation. In this respect, it share[d] the*

*same goals as the LPRP [Lao People's Revolutionary Party] and, being controlled by the LPRP, serve[d] as a tool of the party.' The President of the LFTU, along with the heads of other mass organisations and key government ministries, was given membership of the Central Committee of the LPRP.*

Given the structural deficits of the LFTU it is highly questionable as to whether Principle 4.3 is being met.

#### 4.4

*Management planning and operations shall incorporate the results of evaluations of social impact. Consultations shall be maintained with people and groups (both men and women) directly affected by management operations.*

The auditor's report writes in response to this criterion that;

*LPFL maintains a key stakeholder list. Through various consultations with relevant villagers and local community, CSR activities are determined and implemented. LPFL has not received specific negative comments from stakeholders.*

It is not clear from the auditor's report who is maintained on the stakeholder list. In the annexes of the auditor's report we see that only one civil society stakeholder was interviewed for the FSC audit is the local office of World Wide Fund for Nature (WWF), the representative of which explained that he had yet to visit the plantation sites of Oji LPFL (SGS Qualifor, 2013: 87). Yet as we have seen above, there have been different cases of written and verbal reports made to Oji LPFL and Oji Paper. In addition there are several publically available reports reporting a wide variety of social impacts from Oji LPFL activities (see Hunt, 2011; Barney 2007). The fact that none of these external evaluations and reports by interested stakeholders are mentioned as stakeholders is cause for concern regarding the credibility of both Oji LPFL and SGS Qualifor and indeed for the FSC certification process itself.

#### 4.5

*Appropriate mechanisms shall be employed for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local peoples. Measures shall be taken to avoid such loss or damage.*

The auditors write that documented procedures exist for the settlement of grievances and compensation, yet there is no further discussion of how these mechanisms work especially given the various limitations in the Lao socio-political context. As such it is extremely difficult to comment on this criterion, however, again it is extremely concerning that the auditors find no claims made by stakeholders.

**FSC Principle #5: Benefits from the forest**

*Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.*

**5.1**

*Forest management should strive toward economic viability, while taking into account the full environmental, social, and operational costs of production, and ensuring the investments necessary to maintain the ecological productivity of the forest.*

In response to this principle the auditor's report merely states that a detailed budget exists and those environmental, social and operational costs are documented. No other details are given regarding the economic viability of the plantations, however, Oji LPFL has sought and received funding from the private sector arm of the World Bank to implement their new (non-concession) small-holder model of eucalypt plantations. Hence it would seem that there is some question as to the viability of plantations. Additionally, as some of the target plantation areas are located in areas with a high prevalence of UXO, but that these UXO have not been cleared, it is unclear to what extent this budget incorporates UXO clearance?

**5.2**

*Forest management and marketing operations should encourage the optimal use and local processing of the forest's diversity of products.*

As reported by Hunt, (2011) and Barney (2007), areas where Oji LPFL plantations have seen a loss of both edible and saleable NTFP. Bio-diverse areas of sometimes rich forest have been replaced with mono-culture Eucalyptus and Acacia plantations. As such there has in fact been a large loss in the diversity of forest products as a direct result of the Oji LPFL plantations. Yet the auditor's report states;

*LPFL will identify forest utilisation considering hunting, fishing, harvesting of edible wild plants, grazing and beekeeping by village people.*

With the exception of perhaps bee-keeping all of the above activities have been traditional activities of villagers. In fact it is the Oji LPFL plantations that have impacted upon these activities not the other way around as the auditors comments suppose. The audit report also states that "there are no specific commercial demands for NTFPs". However, both Hunt (2011) and Barney (2007) report quantities of NTFP sold by villagers on local markets providing an important revenue stream with traders visiting local villagers for raw and processed NTFP (also see Figures 05-06 below).

**Figures 05 and 06: Bamboo sheeting manufactured by villagers and sold to traders in Hinboun / Pakkading in Oji LPFL concession area**



Source: Hunt (2011): p.139

5.4

*Forest management should strive to strengthen and diversify the local economy, avoiding dependence on a single forest product.*

Similar to principle 5.2, the auditor's report states only that there is no commercial use of NTFP's in the FMU, and that LPFL will "identify forest utilisation considering hunting, fishing, edible wild plants collection, grazing and beekeeping by village people." Again, with the possible exception of bee-keeping, as has already been stated that there are numerous indications in Hunt (2011) and Barney (2007) that villagers were utilising forests for all these purposes before village forestlands were cleared to make way Oji LPFL mono-culture plantations. Again as above, the claim in the auditor's report that there is no commercial use of NTFP's is false.

**FSC Principle #6: Environmental impact**

*Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.*

6.1

*Assessment of environmental impacts shall be completed -- appropriate to the scale, intensity of forest management and the uniqueness of the affected resources -- and adequately integrated into management systems. Assessments shall include landscape level considerations as well as the impacts of on-site processing facilities. Environmental impacts shall be assessed prior to commencement of site-disturbing operations.*

In relation to this principle the auditor's report simply states that an environmental assessment was completed in March 2010, and that the assessment contains various impact assessments for each stage of LPFL's operations. No mention is made of the previous EIA that Oji LPFL had done in 2006 even though much of the land acquisition and actual plantation operations were undertaken using that EIA. Given that the criterion states that "Environmental impacts shall be assessed prior to commencement of site-disturbing operations", it would seem that it is relevant for the assessor to mention this. The 2006 EIA done by the company was described by Dr Keith Barney of the Australian National University as "*probably the most inadequate ESIA document I have ever come across.*" (Barney, 2013). Given these serious concerns, Oji LPFL should make public their recent

EIA document to build confidence with stakeholders and allow external review of their project. Without this EIA document it is impossible to make any other comment on this criterion.

## 6.2

*Safeguards shall exist which protect rare, threatened and endangered species and their habitats (e.g., nesting and feeding areas). Conservation zones and protection areas shall be established, appropriate to the scale and intensity of forest management and the uniqueness of the affected resources. Inappropriate hunting, fishing, trapping and collecting shall be controlled.*

The auditor's report mentions one rare and endangered species that has been identified within the FMU, (the king cobra), and also states that classification of Rare, Threatened and Endangered (RTE) species is an ongoing work that will be confirmed at the next surveillance audit. While this effort is commendable, no mention is made in the auditor's report of the fact that one of the biggest Lao markets in illegal wildlife trade (in Namthone, at the very southern edge of Pakkading district) exists right in the middle of the Oji LPFL concession area. There is no mention made as to how the clearance of land and forest – habitat for such animals - for Oji LPFL plantations may or may not impact on habitats for species being hunted locally for this illegal trade. Nor is there any mention as to how Oji LPFL plans to control illegal (or inappropriate) hunting, trapping and collecting in an area infamous in Laos for illegal wildlife trade, a goal that many a wildlife conservation project in the same area has so far failed to reach.

## 6.3

*Ecological functions and values shall be maintained intact, enhanced, or restored, including:*

- a) Forest regeneration and succession.*
- b) Genetic, species, and ecosystem diversity.*
- c) Natural cycles that affect the productivity of the forest ecosystem.*

Under this criterion the auditor's report is primarily concerned with the monitoring of water quality. The report states;

*LPFL contacted the Ministry of Health and got water quality data in 2005. This data is very old and should be updated. Therefore, LPFL requested government agency [sic] to analyse [sic] water quality of the surrounding streams at sites using chemicals and results will be reported in JUL, 2013...*

The statement then goes on to note that the;

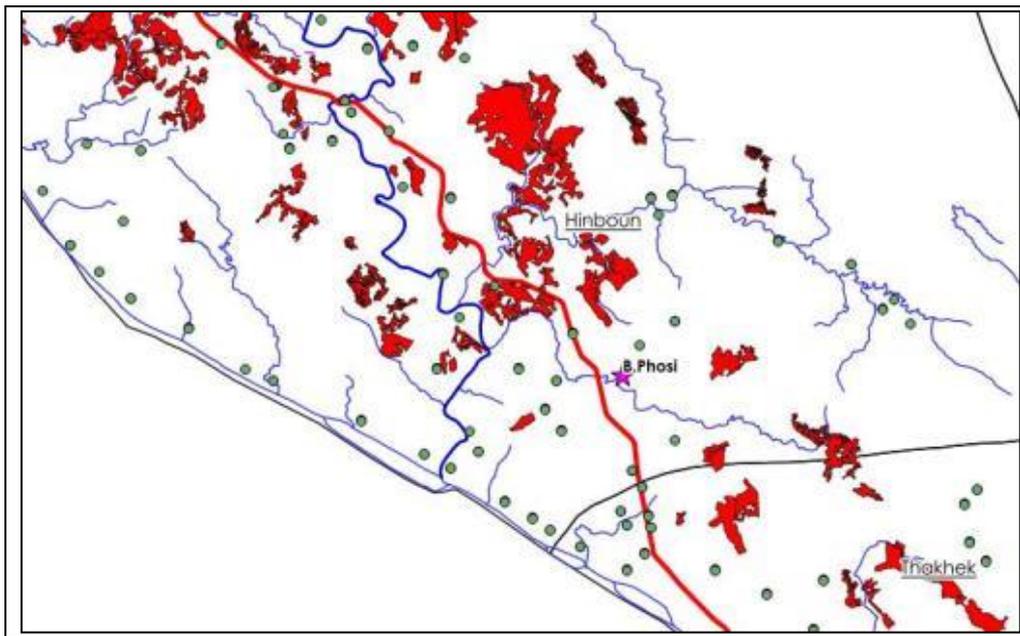
*Audit team confirmed relevant results of water quality examination conducted by government agency and the analysis of the river water has found that water is usable (applicable).*

Upon further investigation this author found the corresponding water quality checks on the company's website<sup>3</sup>. However, upon close inspection water quality check by government agencies appears to only have been conducted at two very remote locations; Phosi village in Hinboun district, and Sibounheuang village in Nyommalat district. Figure 7 and 8 below shows the location of both Phosi and Sibounheuang villages. Oji LPFL plantation areas are represented by red blocks. All data comes from the Lao government, and the plantation data from the Ministry of Natural Resources and Environment is 2010 data, hence it may be possible that in 2013 there were more plantations around the sites that were monitored for water quality. However, what is immediately clear in looking at the maps is that both sites are very far removed from actual Oji LPFL plantation areas.

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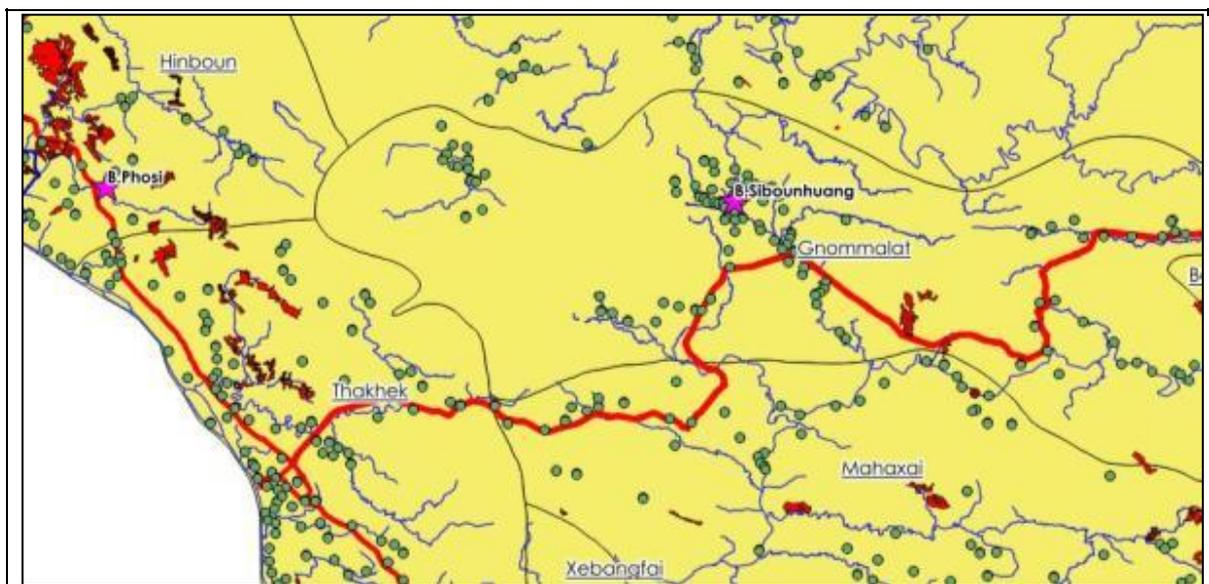
<sup>3</sup> <http://www.lpfl.la/index.php/en/2014-01-12-14-14-20/2014-01-12-15-02-11/2014-01-12-15-03-11>

**Figure 7: Location of Phosi village in relation to Oji LPFL plantation areas (circa 2010).**



Source: Map developed by author using GIS software and Lao datasets from NGD and LPFL concession data from MONRE.

**Figure 08: Location of Phosi and Sibounheuang villages in relation to Oji LPFL plantation areas as at 2010**



Source: Map developed by author using GIS software with NGD data sets and MONRE LPFL concession data

Even if LPFL plantations have since been conducted closer to these water quality test sites, these maps raise serious questions as to why these two locations were selected and not areas closer to well established plantation sites. The auditor's report makes no mention as to the appropriateness of these two sites for water quality testing. As seen in figure 7, there are many areas close by where plantation activities have been going on since at least 2010. Why weren't these areas used for water quality testing?

In addition it is noted by other commentators on industrial tree plantations that nurseries are often places where there is heavy use of agrochemicals (Carrere, 2006: p.16). The main Oji LPFL nursery is located in Songhong village where route 13 crosses the Hinboun River (see Figure 7). There is no mention in the auditor's report as to water quality surrounding any nursery.

Overall the auditor's report to principle 6.3 would appear to be inadequate. There is no mention of water or soil issues, both of which are highly controversial issues in industrial tree plantations (Carrere, 2006; Lang 2003). According to Carrere (2006) fast growing species such as eucalypt when planted in large areas can drastically lower water tables - thereby also affecting villagers whose main water source is largely dependent on artesian wells, yet the issue is not mentioned anywhere in the report.

#### 6.4

*Representative samples of existing ecosystems within the landscape shall be protected in their natural state and recorded on maps, appropriate to the scale and intensity of operations and the uniqueness of the affected resources.*

The auditor's report writes in response to this criterion that "LPFL has plantation forests only which was [sic] created from degraded land and land unsuitable for agriculture". As we have seen, not only is this statement entirely false in that many forest areas have been cleared for Oji LPFL plantations, but that the statement hides a total misunderstanding of the term "degraded land" in the Lao context.

Hunt (2011) and Barney (2007) note that much of the land considered to be degraded in Laos are actually areas of secondary forest where villagers have conducted upland dry rotational cultivation or otherwise previously cleared land areas where there is regrowth of forest. Left alone this forest would typically grow back to a rich forest state. As stated previously rotational (or shifting) cultivation is an important livelihood component of many villages in the Hinboun river area where wet season paddy fields have been rendered useless due to extreme flooding caused by a hydro power dam upstream (Barney, 2007).

Secondary forest is commonly dismissed as "degraded forest" in Lao government literature, and such simplistic labelling no doubt serves the interests of companies involved in acquiring village lands for industrial tree plantations, however, the idea that secondary forest is in some way "degraded" thereby implying of no use (as the audit report states), has been shown to be false. Umemura et.al. (2012) in their scientific comparison of biodiversity of secondary forest and a Eucalyptus plantation in Pakkading district (the same district as the Oji LPFL concession) note that;

*villagers reported that the plantation site offered fewer forest products than the secondary forest; furthermore, it was shown that the cohort of useful plants differed between plantation site and secondary forest. Such villagers' perceptions appear to reflect the substantial disparity in vegetation and presence of useful plant species between the secondary forest and the plantation site. (Umemura et.al., 2012:p.96)*

The research showed that villagers utilised resources in secondary forest for food, medicine, building materials and other uses. Sampled plots of secondary forests contained 80 different species while 61 species were recorded in the plantation. The researchers concluded that "the ratio of availability of both useful species and individuals was higher in the secondary forest than in the plantation" (Ibid., p.94).

This research gives conclusive evidence that contrary to the auditor's report, the secondary (or degraded) forest that was cleared for Oji LPFL plantations has a unique and important ecosystem

that provides benefits to humans and animals in a way which plantation forests do not. The auditor's report is completely lacking in this regard.

#### 6.6

*Management systems shall promote the development and adoption of environmentally friendly non-chemical methods of pest management and strive to avoid the use of chemical pesticides. World Health Organization Type 1A and 1B and chlorinated hydrocarbon pesticides; pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain beyond their intended use; as well as any pesticides banned by international agreement, shall be prohibited. If chemicals are used, proper equipment and training shall be provided to minimize health and environmental risks.*

The auditor's report states only that some chemical herbicides are used in the FMU and that none of these are on the banned list. No mention is made of the nursery area, hence it is not clear what chemicals are used in the nursery area.

#### 6.9

*The use of exotic species shall be carefully controlled and actively monitored to avoid adverse ecological impacts.*

The auditor's report states;

*LPFL recognizes some possibilities of soil degradation and dry up of water as adverse ecological impacts caused by plantation of these exotic species. No specific adverse ecological impacts such as water quantity and unwanted regeneration were reported.*

It is not clear from this response whether Oji LPFL is actually monitoring for water dry up and soil degradation around all their target sites or whether they are simply waiting for someone to report one of these ecological impacts. Oji LPFL should clearly state the frequency and location of all sites visited as part of its monitoring process if such a process does really exist. This principle would appear to be lacking in substantive details.

#### 6.10

*Forest conversion to plantations or non-forest land uses shall not occur, except in circumstances where conversion:*

- a) entails a very limited portion of the forest management unit; and*
- b) does not occur on high conservation value forest areas; and*
- c) will enable clear, substantial, additional, secure, long term conservation benefits across the forest management unit.*

We have already seen reports by Hunt (2011) as to locations of villagers where forest conversion has already taken place. Much of this forest could be considered to be high value conservation forest (HCVF) in that it meets the FSC criteria of forest areas *fundamental to meeting basic needs of local communities (e.g. subsistence, health) and/or critical to local communities' traditional cultural identity (areas of cultural, ecological, economic or religious significance identified in cooperation with such local communities)* (FSC, 1996: p.12).

However, the auditor's report does not even debate whether or not "HCVF" forest was cleared but denies that any forest conversion had taken place, stating only;

*N/A. There has been no forest conversion. LPFL has conducted plantation on degraded lands since 2004 under lease agreement with the government.*

If such a statement was made by Oji LPFL or GoL staff to the auditors it is an outright falsification. Hunt (2011), documents how although Oji LPFL wasn't clearing the forest areas themselves, they knew what was going on with logging of dense forest for Oji LPFL plantations development during 2005-2008 but simply ignored the issue. Hunt writes;

*a consultant working for the company [Oji LPFL] from 2006-2009 claimed in interviews ... 'that in fact Oji Paper simply turned a blind eye to logging' (Hunt,2011: p.148).*

Hunt also quotes Hinboun district government official as saying;

*Presently they [Oji LPFL] are removing trees and putting them in piles, the size of the wood is 20 cm in diameter, and burning the lot. They only need land, they don't need wood. (Ibid: p.158)*

The official went on to say of Oji LPFL operations

*I'm not satisfied. Because it seems that it is not development but damaging. For example, if Oji wants to do development, they should do LFA and choose the land that has flood or use land that cannot be cultivated. (Ibid: p.159)*

Barney (2007), quotes a villager in Pak Veng village as stating of the clearance of forest for Oji LPFL plantations;

*If the villagers cut the big forest like this, we would go to jail... Laos loses benefits from these actions. (Barney, 2007: p.77)*

In one case of extensive logging of rich natural forest for Oji LPFL plantations - in Thamii village, Hinboun district, - a consultant working for Plantations International, an Australian Forestry Consulting Company, is quoted as saying that the deforestation was simply "shocking" and that;

*Morally, [Plantations International] cannot be involved in this [project] (Hunt, 2011: p.156)*

Photographs of the deforestation in preparation for Oji LPFL plantations were shared with the author and reveal the true nature of deforestation that took place.

**Figure 09 and 10: Land Clearance for LPFL plantations in Thamii village**



Source: Anonymous Photographer,  
28 August, 2007

**Figure 11 and 12: Land Clearance for LPFL plantations in Thamii village**



Source: Anonymous Photographer,  
28 August, 2007

**Figure 13, 14 and 15: Land Clearance for LPFL plantations in Thamii village showing Japanese Oji LPFL staff inspecting Thamii village land clearance**



Source: Anonymous Photographer, 28 August, 2007

Pictures taken at other Oji LPFL village locations during land clearance also indicate that dense forest clearance has been a widespread phenomenon.

**Figure 16 and 17: Forest Clearance in Thaken village for Oji LPFL plantations**



Source: Anonymous Photographer, Mid 2007

**Figures 18, 19, 20 and 21: Forest Clearance in Nathan and Paleam villages for Oji LPFL plantations**



Source: Anonymous Photographer, 22 November, 2007

The fact that none of this appears in the auditor's report only raises suspicion that this incident was not a one off, and raises the question as to how many more Thamii village incidents are being hidden

by Oji LPFL and/or the GoL. While the exact scale of the deforestation to make way for Oji LPFL's plantations is unknown, to state (as SGS does) that "there has been no forest conversion" is simply not true.

**FSC Principle #7: Management plan**

*A management plan -- appropriate to the scale and intensity of the operations – shall be written, implemented, and kept up to date. The long term objectives of management, and the means of achieving them, shall be clearly stated.*

7.4

*While respecting the confidentiality of information, forest managers shall make publicly available a summary of the primary elements of the management plan, including those listed in Criterion 7.1.*

The auditor's report notes the various accomplishments of the Management plan in principles 7.1-7.3. However, although the auditor's report states under principle 7.4 that;

*LPFL has compiled a summary of forest management plan. The summary is publicly available upon request. The summary covered all elements listed in criterion 7.1*

The author was not able to obtain a copy of the Forest Management Plan on the Oji LPFL website because the link to download required a login and password. The author sent an email to Oji LPFL on the 7th of February requesting a copy of the summary report and received the following reply from Oji LPFL on the 18<sup>th</sup> of February.

**Subject:**Re: Summary of Oji LPFL Forest Management Plan

**Date:**Tue, 18 Feb 2014 13:33:49 +0700

**From:**Katsumi Kaneda <kaneda@lpfl.la>

**To:**Glenn Hunt <hunt.glenn@gmail.com>

Dear Mr Glenn Hunt,

Thank you for contact us and showing interest to our project.

For your request, please try to have a look our homepage as below.

[http://www.lpfl.la/index.php?option=com\\_content&view=article&id=50&Itemid=59&lang=en](http://www.lpfl.la/index.php?option=com_content&view=article&id=50&Itemid=59&lang=en)

Best Regards,

\*-----\*  
Katsumi Kaneda  
Oji Lao Plantation Forest Company Limited (LPFL)  
TEL: +856-21-35-3511  
FAX: +856-21-45-2260  
Mobile: +856-20-55529280  
\*-----\*

In following the provided link the following information was available as of the 3<sup>rd</sup> of March, 2014.

*The utilization of this document is to orient all stakeholders to the purpose and strategy of the company and how it is to be accomplished. Rather like a set of “rules of the game” with the “game plans” clearly identified through Best Operating practices (BOP’s).*

*The use of the FSC Principles & Criteria (FSC P&C) frame work and a well practiced Occupational Health and Safety system are essential tools to achieve objectives listed below and also explicitly states long term commitment to the practices consistent with the FSC P&C.*

### **LPFL forest management objectives**

- A. Provide a flow of timber, and agricultural products within specification and in a timely manner to meet commitments and the requirements of the business plan*
- B. Provide and maintain a safe working environment for staff and contractors*
- C. Maintain and where possible improve site productivity through better management practices and through a tree improvement program*
- D. Identify and help protect threatened species and threatened ecological communities located on or adjacent to company managed land and where possible help local communities protect areas of significant value*
- E. Maintain water quality, identify and manage well any wetlands and riparian zones on or adjacent to managed lands*
- F. Maintain a balance of plantation age classes to provide a sustainable dividend to investors as well as maintaining long term social and economic benefits to the local community*
- G. Limit adverse impacts of plantation operations to the managed lands*
- H. Maintain or enhance environmental values on or adjacent to managed lands; with specific reference to wildlife corridors, pockets of native vegetation of significant local value, such as spiritual forests within and adjacent to the plantations*
- I. Continually improve the timber and agricultural resource and its management through directed research*
- J. Protect the assets from damaging agents such as fire, insect attack and diseases*
- K. Develop and manage good relationships with stakeholders and the community*

*Last Updated on Monday, 17 February 2014 13:34*

Of interest, this link was only updated one day before I was emailed by Oji LPFL. Clearly this summary of the management plan is totally inadequate in terms of providing any useful summary of information on the forest management plan to stakeholders and interested parties. The 11 short bullet points that apparently constitute the public summary make a mockery of the FSC certification, and are so limited as to be entirely meaningless.

**FSC Principle #8: Monitoring and assessment**

*Monitoring shall be conducted -- appropriate to the scale and intensity of forest management -- to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.*

8.5

*While respecting the confidentiality of information, forest managers shall make publicly available a summary of the results of monitoring indicators, including those listed in Criterion 8.2.*

The auditor's report states that a summary of these monitoring results are available on the Oji LPFL website, however, the author was unable to find a link to a copy anywhere on the website when accessing the website on February 7<sup>th</sup> 2014.

**FSC Principle #9: Maintenance of high conservation value forests**

*Management activities in high conservation value forests shall maintain or enhance the attributes which define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.*

9.1

*Assessment to determine the presence of the attributes consistent with High Conservation Value Forests will be completed, appropriate to scale and intensity of forest management.*

The auditor's report states only that no high conservation value forests were found within the FMU areas. It is not entirely clear what constitutes the FMU. Is this only the planted Eucalypt and Acacia plantations of Oji LPFL or something bigger? It would appear from the principle that Principle 9 is not concerned with forest plantations but rather management of HCVF. As such although Oji LPFL has almost certainly cleared HCVF for plantations it is possible that there is no HCVF remaining within the FMU, precisely because the FMU is only industrial tree plantation. The point is that no HCVF assessment was carried out **before** forests were cleared to make way for Oji's plantations.

*Principle 9.2: The consultative portion of the certification process must place emphasis on the identified conservation attributes, and options for the maintenance thereof.*

Again it is not clear whether this represents only the plantations or a broader area, however the auditor's report would appear to indicate that a broader area is being described (the scope forest).

*See C9.1. No HCV has been identified in the scope forests. For example, Land survey including identification of HCVF has been conducted by LPFL and the government on the land allocation process.*

Yet we have already seen and as Hunt (2011) documents, areas of conservation forest allocated under the LUP process have actually been not only actively sought after, but also cleared for the establishment of LPFL plantations (Hunt, 2011: p. 188). If a government agency allocates a forest area as a "village conservation forest" during a LUP process, it would seem that the government itself regards such area as HCVF, otherwise why allocate the forests as conservation forest at all?

### **FSC Principle #10: Plantations**

*Plantations shall be planned and managed in accordance with Principles and Criteria 1 - 9, and Principle 10 and its Criteria. While plantations can provide an array of social and economic benefits, and can contribute to satisfying the world's needs for forest products, they should complement the management of, reduce pressures on, and promote the restoration and conservation of natural forests.*

#### 10.2

*The design and layout of plantations should promote the protection, restoration and conservation of natural forests, and not increase pressures on natural forests. Wildlife corridors, streamside zones and a mosaic of stands of different ages and rotation periods, shall be used in the layout of the plantation, consistent with the scale of the operation. The scale and layout of plantation blocks shall be consistent with the patterns of forest stands found within the natural landscape.*

There is ample evidence to suggest that contrary to this principle Oji LPFL plantation areas are increasing pressures on natural forests. Hunt (2011) documents conflicts between neighbouring villages in Hinboun district where in one village large amounts of land have been acquired for Oji LPFL's plantations, and neighbouring villagers where the village has refused to allow Oji LPFL plantations to be established (Hunt, 2011: pp.140-145).

In Phonsaart village where villagers from neighbouring Thanna Tai and Phachua both declared that Phonsaart villagers had lost so many resources that they had to cross over the village boundaries to find resources in their villages. Hunt notes that this story was even confirmed by a Hinboun District government official.

*...now Phonsaat Village gave their land to Oji, and now they don't have any land, and they need some land from Thanaa Village (Hunt, 2011: p.143).*

The situation was so bad in Phonsaart village that finally the conflict was only solved by Phachoua village relinquishing some of their traditional lands to Phonsaart village (Ibid.).

While Hunt records only two villagers that are suffering from resource losses leading to increased pressure on existing forests, it is not difficult to imagine a similar situation being repeated in villages where large areas of land have been acquired by Oji LPFL for plantations development. Many villagers in Laos have a high degree of dependency on NTFP and the clearing of large areas of their forests, be they secondary or primary, can have a serious impact on natural resources and the food security of villagers. The fact that such concerns have not made it through a bureaucracy of village, district and provincial officials, all paid by Oji LPFL, only highlights the ineffectiveness of the Oji LPFL grievance and monitoring mechanisms.

The auditor's report tries to lay blame for any (unmentioned) problems related to increasing resource pressures on natural forest squarely on the GoL;

*Lao Government allocates degraded forest lands as plantation sites to LPFL. Therefore, the scale and layout of existing and new plantation blocks are determined by the government decision through land survey.*

However, as has been stated previously, the GoL holds a 15% stake in Oji LPFL as part of the joint venture agreement and as such this answer is entirely unsatisfactory. Government land allocation processes need to be held just as accountable to the same FSC standards.

## 10.8

*Appropriate to the scale and diversity of the operation, monitoring of plantations shall include regular assessment of potential on-site and off-site ecological and social impacts, (e.g. natural regeneration, effects on water resources and soil fertility, and impacts on local welfare and social well-being), in addition to those elements addressed in principles 8, 6 and 4. No species should be planted on a large scale until local trials and/or experience have shown that they are ecologically well-adapted to the site, are not invasive, and do not have significant negative ecological impacts on other ecosystems. Special attention will be paid to social issues of land acquisition for plantations, especially the protection of local rights of ownership, use or access.*

The auditor's report states that Oji LPFL hires 132 patrollers who check for things like impacts on soil or water. No doubt this is referring to the hiring of village headmen as previously mentioned. Nothing is said on the details of how monitoring investigations are carried out or whether these patrollers have the capacity to conduct soil and / or water analysis. The auditor's report states that off site economic impacts are also monitored by these patrollers. No indication is given as to what is meant by this, however, this report has documented numerous economic impacts on communities as a direct result of Oji LPFL plantations. In spite of all the evidence presented above the auditor's report states;

*There were no serious issues raised in terms of impacts from operations.*

Clearly there are problems with the monitoring system.

Criterion 10.8 also demands that specific attention is paid to social issues of land acquisition for plantations, especially the protection of local rights of ownership, use or access. In response to this, the auditor's report states only that *no tenure issues were identified*. Given the situation with land concessions in Laos and with what we have seen in this report as to Oji LPFL's acquisition process it is frankly preposterous that no land tenure issues have been identified as a result of Oji LPFL's plantations. Hunt, (2011) devotes a whole chapter to case studies and discussion of the Oji LPFL land acquisition process. Hunt's findings are in direct contrast to the auditor's report. His concluding remarks are reproduced here in full.

*Clearly there are serious concerns regarding Oji LPFL operations in Hinboun District. In summary, what this chapter has shown is that Oji LPFL staff and GoL officials are operating above both government law and policy, and also above Oji LPFL's own company policy when acquiring land for plantations. Oji LPFL land acquisitions have been shown to be removing forest land that is zoned as restricted forest zonings (conservation, protection, regeneration). In addition these land acquisitions do not appear to be in the interests of improving villagers' livelihoods, and in most cases, villagers themselves (if not the authority, then the ordinary village folk) were opposed to the plantations on their land. The opposition of villagers is not particularly surprising given that, as I have shown in previous chapters, villagers lose their various natural resources and the nature of the concessions as 'investments' do not produce any livelihood alternative in return. The only benefits many villagers receive are small, one-off infrastructure projects as part of the social contribution programme of Oji LPFL and a loose 'promise' of jobs. (Hunt, 2011: p.219)*

## 10.9

*Plantations established in areas converted from natural forests after November 1994 normally shall not qualify for certification. Certification may be allowed in circumstances where sufficient*

*evidence is submitted to the certification body that the manager/owner is not responsible directly or indirectly of such conversion.*

Given the previous evidence on the large scale forest conversion that has been ongoing in Oji LPFL plantations, it is frankly astounding that Oji LPFL has achieved certification under FSC. Yet, it has to be said that this is entirely because of the substandard and totally inadequate auditing report made by SGS Qualifor, that seems intent on writing as little as possible and is not interested in seeking out stakeholders such as Dr Keith Barney, who has done extensive research on Oji LPFL plantations. Nor did the auditors bother to contact local NGO's that were or presently are operating in Hinboun district despite the fact that such information can easily be found on the Lao INGO website at [www.directoryofingos.org](http://www.directoryofingos.org) . It is not at all surprising then that in its total response to principle 10.9 the auditor's report states without any hint of irony;

*The plantation of LPFL has been created since 2004 on degraded forest land in terms of a government lease. All relevant documents are available.*

Such a simplistic understanding of land and forest tenure issues and the socio-political context of Laos raises the question as to how SGS Qualifor is even entitled to undertake FSC auditing. It would appear that the undertone of this sentence is that the GoL has given the company degraded land, and if that is found out to have actually been forests cleared by the government prior to Oji LPFL's land acquisition, then this is not the fault of the owner. Yet this presumes that the GoL is an entirely separate entity from Oji LPFL. However, the fact is that Oji LPFL is a joint venture between Oji Lao Holdings (made up of various Japanese companies) and the Government of Laos who hold a 15% stake in Oji LPFL. As such the GoL is in fact one of the owner's of Oji LPFL.

The clearance of village conservation forest and rich forests that have been noted above warrant further investigation by FSC auditing bodies and FSC itself. Satellite imagery and aerial photography could be easily purchased from the Lao Forest Inventory and Planning Division as well as from the National Geographic Department of the Prime Minister's office in Vientiane to ascertain the extent of deforestation that has resulted from Oji LPFL plantations.

## **Conclusion**

This report has detailed point by point the responses of Oji LPFL and SGS Qualifor against the 10 FSC principles and their criteria. In doing so a picture has been shown of an FSC certification process to which significant questions remain.

It is not the intention of the author in this report to demonize FSC certification. FSC certification can be a useful tool to ensure best practices standards are being maintained by companies with certification. Likewise FSC certification comes with a guarantee to end user consumers that forest based products have been produced all the way through the supply chain with best practice international standards.

However, this report highlights a series of issues with the SGS Qualifor assessment of Oji LPFL's project in Central Laos that without doubt are contrary to the expectations of excellence which the public would typically expect from FSC certification. Principally amongst these issues is the numerous examples of large scale clearance of both bio-diverse secondary and primary forest for the Oji LPFL plantations. In this regard, Oji's LPFL's plantations have clearly violated FSC principles 10.9 and 6.10 regarding the clearance of forest. This report documents several cases of forest clearance through photographs, as well as from the voices of Oji LPFL employees, Lao government

officials, as well as rural villagers. Several different reports have been cited which also document closely issues of deforestation connected to Oji LPFL plantation operations.

By contrast the auditors' report takes a very simplistic approach to the issue of forest clearance for plantations by stating that Oji LPFL has only conducted plantations on what the government has deemed to be "degraded land". The premise of the company is clear; that it is the Government of Lao PDR that is responsible for the allocation of land and the company is somehow free from any wrong doing if the government has cleared forest before allocating land to Oji LPFL for plantations development. Yet such a response is entirely inadequate. This is because the Government of Laos actually has a 15% stake in Oji LPFL through a joint venture arrangement in which the government is required to secure the land for plantations. As such government land acquisitions themselves could be said to actually be a company related operation that is being performed by the minority shareholder (i.e. the Government of Laos), and as such these land acquisitions themselves should be held accountable to FSC standards. Yet this has not been done in the audit report.

Secondly this report has highlighted various cases where clearly there has been clearance of land that is clearly not degraded, including village conservation forest areas, among other areas. Clearance of high value forest prior to plantation operations is clearly anathema to the Principles contained in the FSC and similarly is anathema to the public consciousness of how FSC certified plantations should occur. Lastly, the concept of 'degraded land' in Laos is not a straight forward issue. Lands designated as degraded commonly include secondary forest or areas part of extensive agro-forestry cropping systems such as rotational ("shifting") cultivation. Such areas have been shown to have a high degree of bio-diversity and the resources within these forest areas are invariably used by villagers for their livelihood needs. To claim in the Lao context as Oji LPFL and SGS do, that land is simply "degraded" and therefore applicable for plantation development shows an extensive gap in the understanding of both Oji LPFL and, more worryingly, in SGS Qualifor of the socio-political context governing forests in rural settings.

This report has also raised significant questions regarding the startling omissions on the dangers presented by unexploded ordnance (UXO) to Oji LPFL workers on plantations sites. This report has likewise presented a case study of Oji LPFL employee's having been exposed to extreme danger in the workplace through Oji LPFL's failure to clear unexploded ordnance from plantation sites before plantation operations have begun. The omission from the auditor's report of anything to do with UXO and the potential threat to workers raises serious questions as to whether Oji LPFL and SGS Qualifor have engaged in this FSC certification process in good faith or whether there has been a deliberate attempt to deceive FSC and the public at large about what is really happening inside of Oji LPFL plantation operations.

In addition the answers given in the public summary certification document written by SGS Qualifor to many of the FSC criterion are totally insufficient. It is noted among these that Oji LPFL and SGS's responses to the issue of customary land tenure is woefully lacking and entirely ignorant of the complex customary tenure arrangements in the Lao socio-political context. Despite a decade of controversy surrounding the land concession model in Laos and even Oji LPFL's apparent abandonment of concessions model of farming in preference for smallholder farming no mention is made in the summary report as to the reasons for Oji's abandonment of concessions, or even any hint of controversy surrounding land acquisition under the concession model in the Oji LPFL project.

This report has likewise highlighted numerous inconsistencies in the Oji LPFL public summary document with the facts on the ground. Further clarification and explanation from Oji LPFL is required, and likewise further investigation by FSC into the audit process is warranted. Whether it is water quality checks conducted in inappropriate locations, or misleading statements regarding the rights (or lack thereof) of Lao workers to form independent trade unions, the variety of documents

that Oji says it has made public but which in reality cannot be found on the company's website, one can't help but draw the conclusion from all these glaring inconsistencies that the FSC certification process has not been undertaken in good faith by the company, nor by the auditing agency, and as such should be immediately withdrawn, and an investigation launched into how such an inadequate audit has been allowed to take place.

## Recommendations

### For FSC

- 1) FSC should immediately conduct an independent review of the Oji LPFL certification against the concerns raised in this document.
- 2) FSC should conduct a review of SGS Qualifor and why such a sub-standard report has been issued by the auditor that has clearly failed to live up to FSC standards of due diligence.<sup>4</sup>
- 3) FSC certification should be withdrawn from the Oji LPFL project until the issues highlighted in this report are successfully addressed.

### For Oji LPFL

- 1) The company should immediately clarify all and every plantation that has had UXO clearance undertaken and the dates these clearance operations were undertaken.
- 2) The company should immediately clarify whether the villages of Natangchay, Kacham-nyai, Kacham-noy and Phova have had UXO clearance operations undertaken and whether UXO has been identified as a concern in any other plantation areas.
- 3) The company should immediately clarify its policy on UXO clearance in plantation sites and explain why clearance has been undertaken only after plantations were already established.
- 4) As a trust building measure the company should publicly release any non-commercial related information such as EIA's SIA's, community grievance mechanisms etc onto their website.
- 5) The company should disclose and / or suspend all regular payments to village and government officials in senior positions in order to stop a conflict of interest arising and to ensure the independence of officials in their dealings with Oji LPFL.
- 6) The company should immediately have an independent analysis undertaken free from government interference of previous land acquisition processes in order to ascertain the number of outstanding land tenure claims and the extent of resource loss that has taken place as a result of Oji LPFL plantations. Following this, the company should return land to village communities or compensate villagers for all natural resource loss and other land related losses as per Prime Ministers Decree on Compensation and Resettlement PM/192.
- 7) The company should publicly release its policy on the consumption of wildlife for staff and government officials undertaking work for Oji LPFL.
- 8) The company should take a far more proactive, systematic and transparent approach to monitoring of water and soil quality, particularly in areas of high plantation density and around the nursery. The results should be released publicly as they affect the public at large. Water, sediment and soil tests should outline for which chemicals have been tested and samples sent to expert laboratories in Bangkok if tests cannot be accurately performed in Laos.

### For Government of Laos

- 1) The Government of Laos does not benefit from having regular payments made to people in positions of authority as is the case with committee per diem and other monthly allowances for senior officials. This action undermines the ability of the Government to be an independent adjudicator between the communities and the company. As such it is recommended that the government implement strict guidelines on the receipt of money from plantation companies to government officials to ensure the impartiality of the government.
- 2) The Government of Laos should intensify its moratorium on land concessions to have an immediate halt on all planting of crops and forests under a concession model (including on existing concessions) until the government finalises the National Land Policy and details a clear policy and legal framework on customary tenure.

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<sup>4</sup> SGS Qualifor has a long history of controversial FSC certifications.  
See <http://www.fsc-watch.org/archives/?other~SGS+Qualifor>



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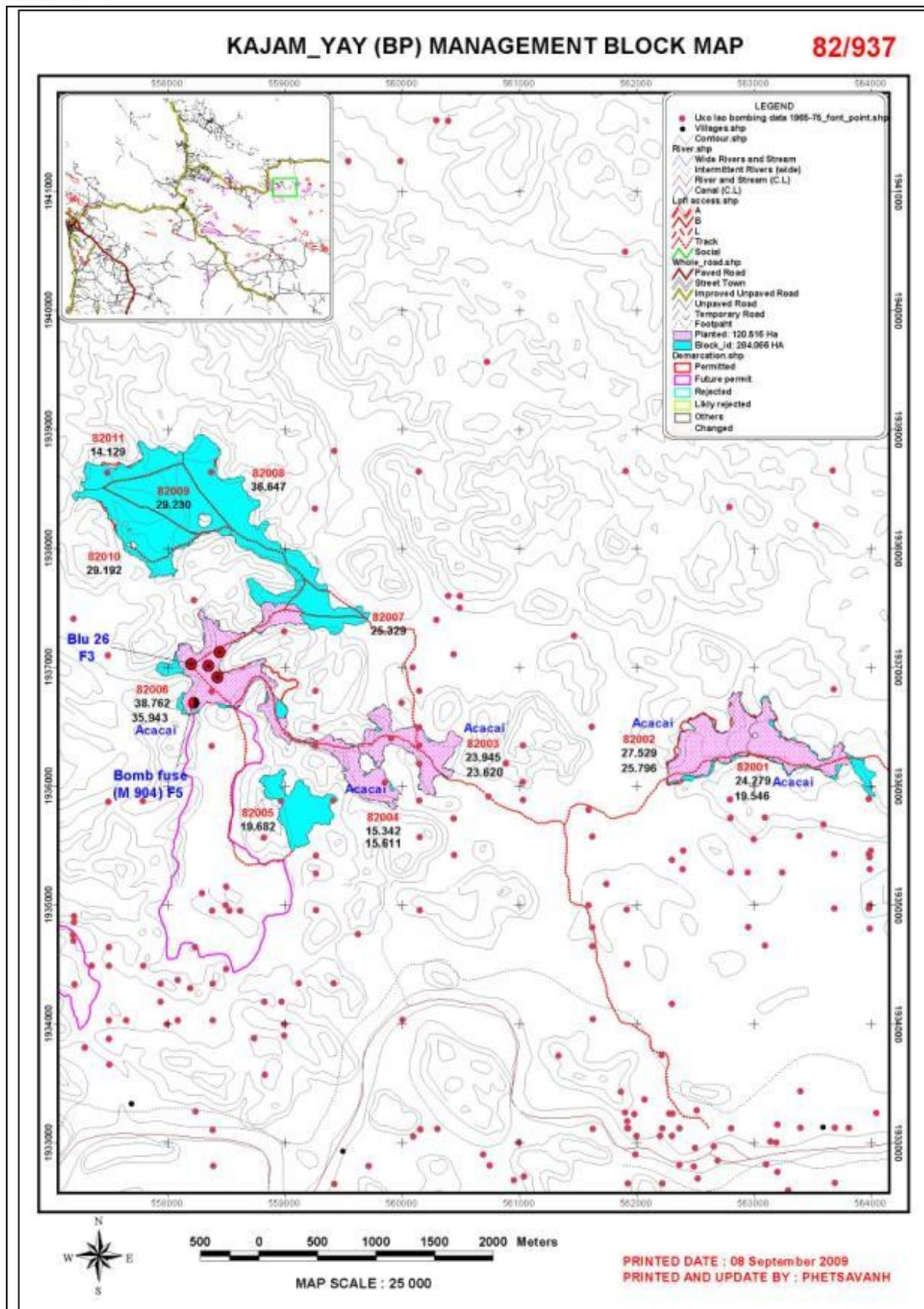
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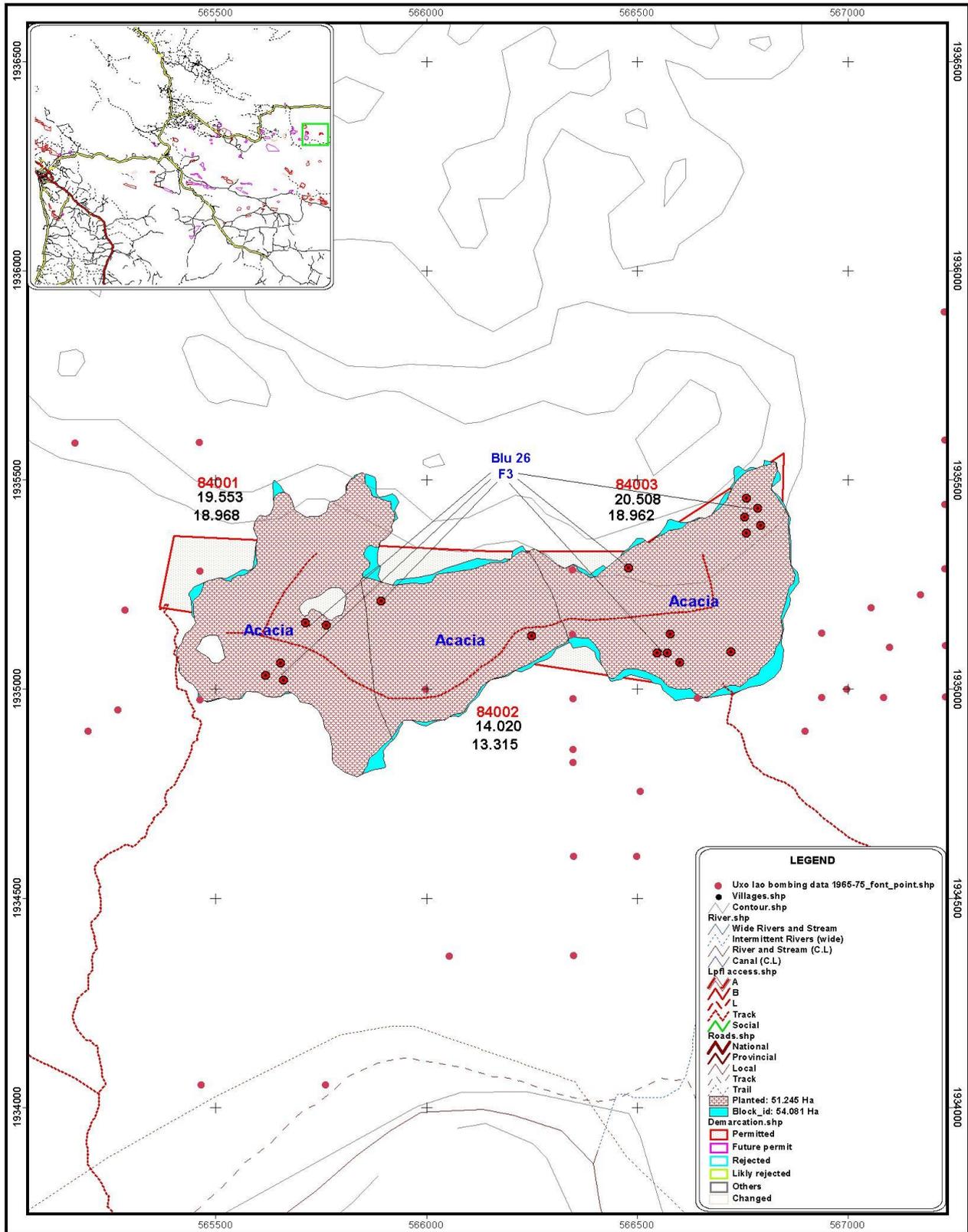
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# KAJAM\_NOY (BP) MANAGEMENT BLOCK MAP

84/937

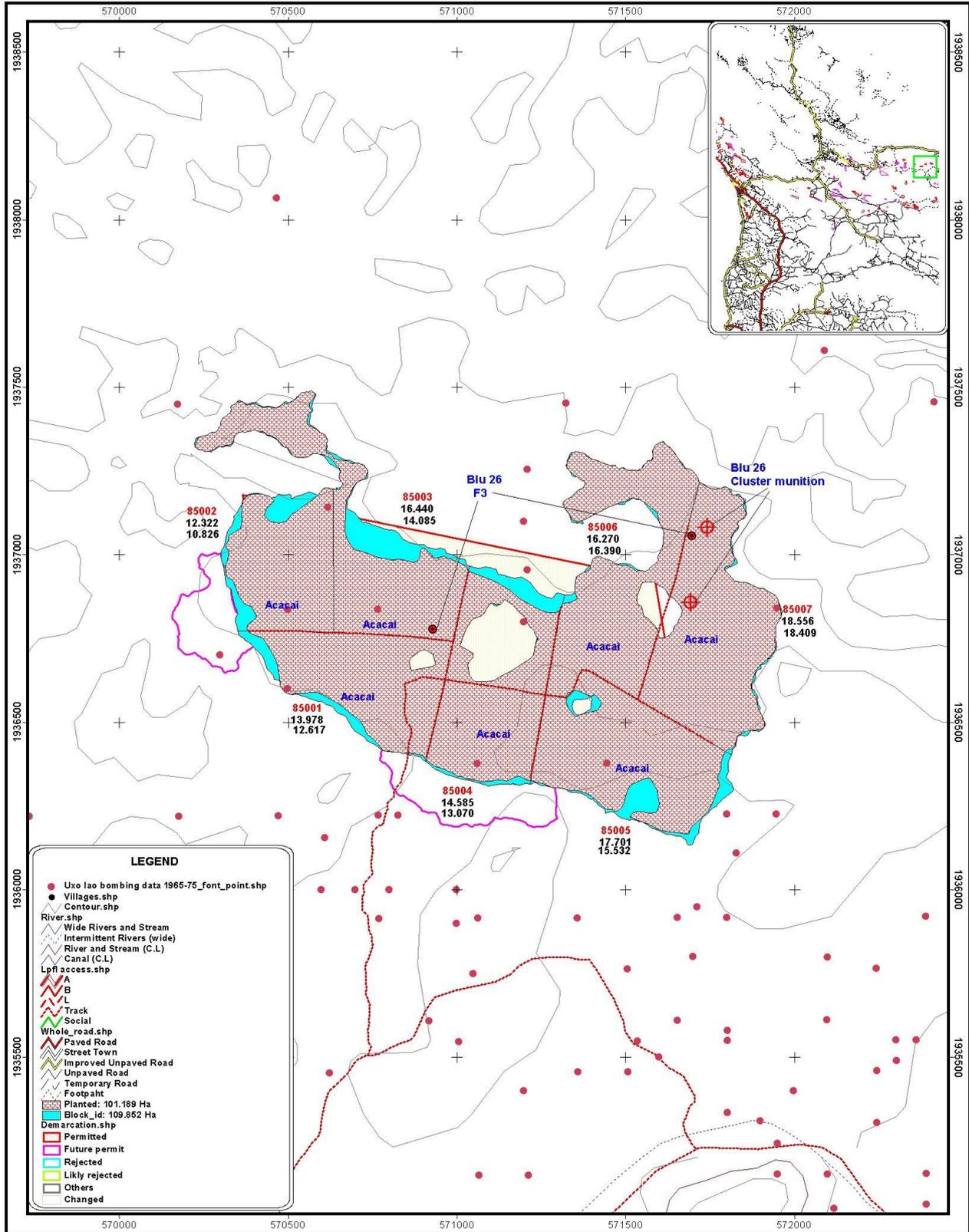


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85/937

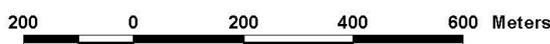
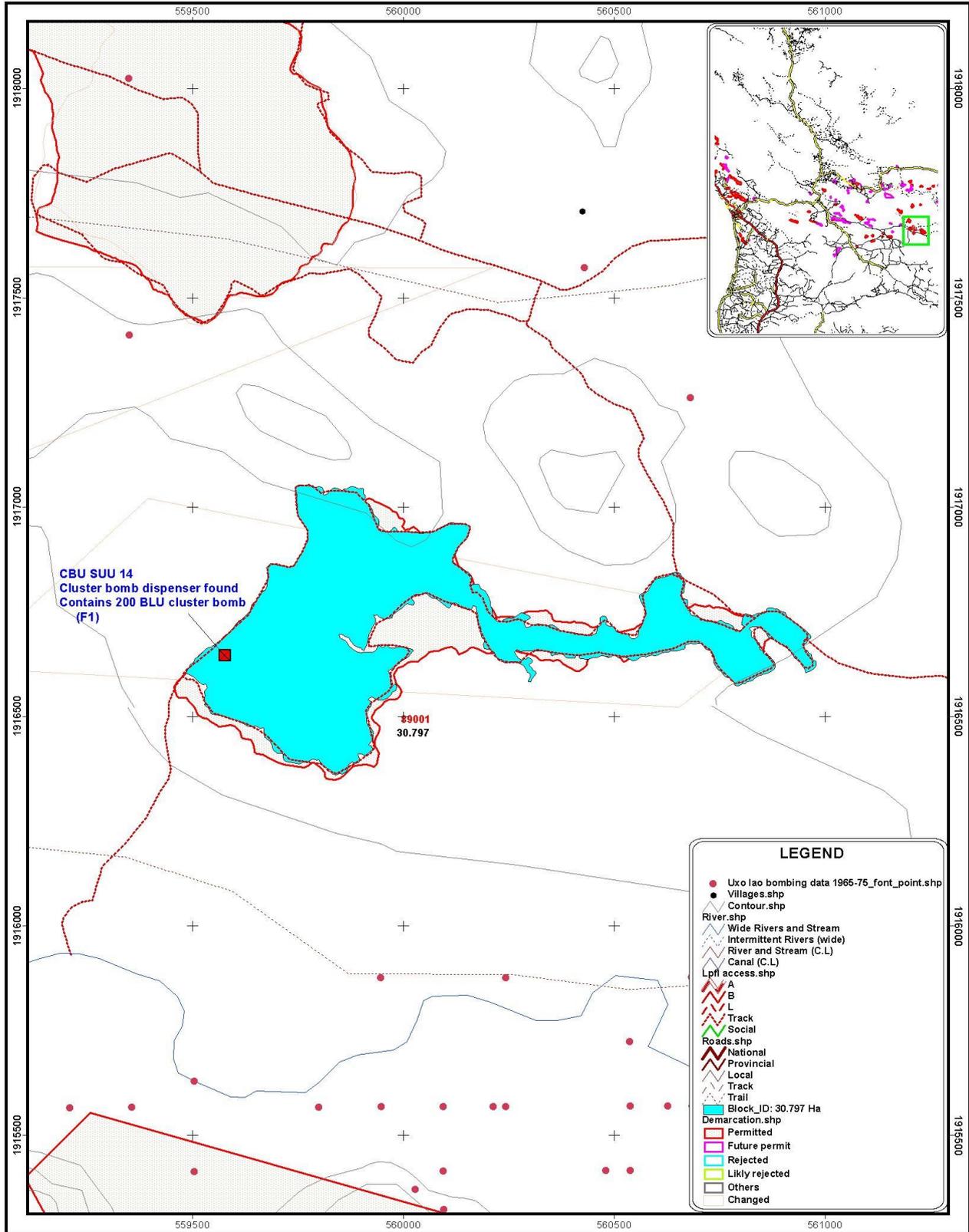


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# PHONEDENG (MX) MANAGEMENT BLOCK MAP

89/937

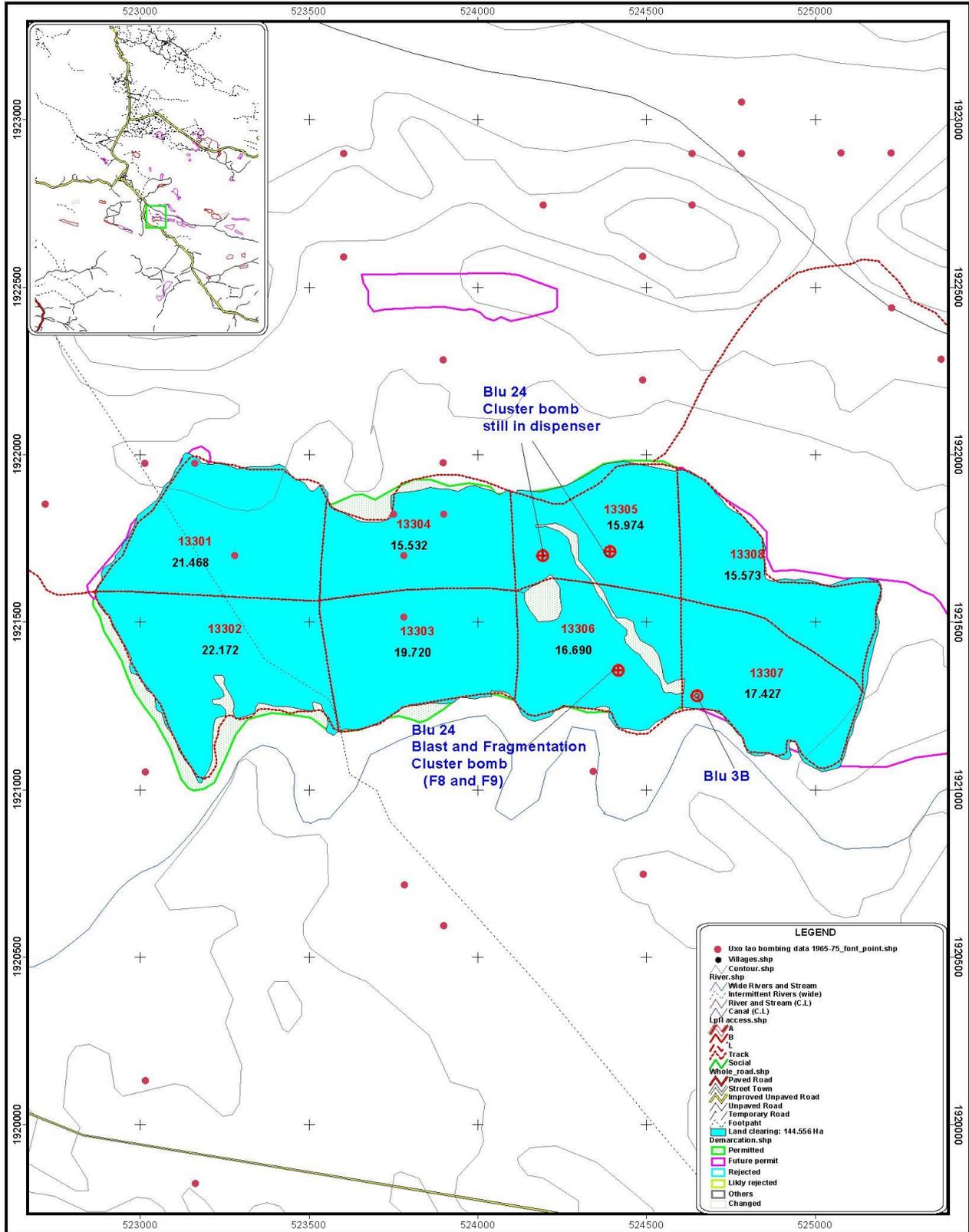


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133/937



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