

### ABOUT THIS WORK

This work is part of the Lifescape Project's [Rewilding Law Innovation Lab](#), through which we share practical learning from working with projects on the ground to overcome potential legal barriers or maximise positive legal impact for rewilding. We want other organisations and rewilding practitioners to adapt and reuse it, so the impact of our legal innovation is upscaled. We work to identify opportunities for wider legal and policy reform that could better support rewilding at scale. Our aim is not only to help projects navigate existing systems, but to help shape legal systems better equipped for the environmental challenges of the future.

Rewilding needs law that can keep up – find out about our [Rewilding Law Innovation Lab](#) on our [website](#).



### AT A GLANCE

**Collaboration in practice.** This case study is part of a collaboration between [The Lifescape Project](#), [Rewilding Portugal](#) and [Rewilding Europe](#). It builds on systemic issues identified in various rewilding landscapes and developed in the [Rewilding Law Hub](#) legal guidance notes. It shares practical learnings from work on the ground to understand how existing legal frameworks can support rewilding, where legal barriers remain, and where targeted legal change may be needed.

**What happened?** Working with Rewilding Portugal and with local legal support from law firm PLMJ, we used an existing Portuguese property right to secure approximately 30 hectares of land for rewilding, permanently and without buying full ownership over it. The land stays in its owner's hands, but a "superficies right", created in favour of Rewilding Portugal, legally commits the latter to allow the land to follow natural processes with no intervention or extractive activity. That commitment is registered, so it binds the land into the future, including if the landowner changes in the future. As far as we know, this is the first time a superficies right has been used for rewilding, and we believe it can be replicated across Portugal and other European countries where such a similar legal right exists.

**Why does it matter?** Rewilding needs durable, long-term security, but getting full ownership over the land is often impossible. Our work with Rewilding Portugal demonstrates that nature recovery can be locked in for the long-term using other existing property rights, without the cost or burden of ownership (with exception of the applicable taxes), making securing land far more attainable where it is not possible to purchase it.

**Main lesson.** A registered superficies right attaches to the land itself, not just to the people who agreed it, so the rewilding purpose survives changes of ownership. In order to be valid and enforceable, it must be a genuine superficies right, meeting the necessary legal formalities and registered, not a general conservation instrument.

## WHY THIS MATTERS

It is often not possible to own the large areas of land needed for rewilding. This means that rewilding organisations often only have a temporary and precarious right to the land they are rewilding (e.g. under a lease or management agreement). However, rewilding works on nature's timescale and needs to endure beyond these temporary agreements. Without durable security over the land itself, a project can collapse the moment the land changes hands or the agreement otherwise reaches the end of its term.

The landowner of the 30 hectare-area being managed by Rewilding Portugal supported the long-term use of the land for rewilding but was not willing to sell it to Rewilding Portugal. The challenge we wanted to overcome was to give Rewilding Portugal a legal position strong enough to last: durable, registered, and able to survive if the land passed to a new owner in the future.

The superficies right allowed us to achieve this objective, using a legal tool that already exists. Ownership of land stays with the landowner, whilst Rewilding Portugal holds rights over the surface of the land for rewilding purposes. This position is registered and binds the land itself, not just the people who originally agreed to create it.

This is the part that matters beyond one project. It is not the same as creating a dedicated conservation mechanism, it is an everyday property right, adapted within its legal limits to lock in land for nature. Securing land for rewilding need not depend on new conservation law, or on buying land. The value of this case is more practical: it shows how an existing property right can be adapted to support rewilding.

## Replicating this approach

This is a tool practitioners and other organisations can use. The superficies right is an existing part of Portuguese property law, and rights of the same nature exist across many civil law jurisdictions in Europe.

The core idea of using an existing property right to secure land for rewilding without acquiring full ownership over it, should transfer well beyond this case. It exists on broadly similar terms in Spain, and the Lifescape Project has published guidance on comparable rights in [Italy](#), and [Romania](#).



## What is a superficies right?

Under article 1524 of the Portuguese Civil Code, a superficies right is a right to build or maintain works on land belonging to another person, or to plant or maintain plantations on that land. It can be created temporarily or forever (perpetually).

It can be granted either gratuitously or in return of payment. In this case, it was granted for free. The landowner keeps ownership of the underlying land, whilst the holder of the right (the superficiary) has an autonomous right over the surface for the specified purpose. This is useful where a rewilding organisation needs long-term rights over land that is not being sold.

However, the superficies right has its own legal structure and must include the legally recognised content of superficies: building or maintaining works, or planting or maintaining plantations. Additional activities related to rewilding may be included, but the deed should not be drafted only as a broad conservation or rewilding agreement.

This matters because the right may be extinguished if the works etc contemplated in the deed are not carried out. Under article 1536, a superficies right may be extinguished if the superficiary does not complete the work or carry out the planting within the agreed period (or, within ten years if none was agreed). It may also be extinguished if, after destruction of the original work or plantations, the superficiary does not reconstruct or replant within the same periods.

So, when adapting a superficies right for rewilding, set out clearly in the deed the activities supporting the right, and explain how they serve the rewilding purpose. This presents the arrangement as a genuine exercise of the superficies right, rather than as a free-standing conservation promise.

## What was done in this case?

The landowner granted Rewilding Portugal a gratuitous and perpetual superficies right over four neighbouring properties covering about 30 hectares in the Greater Côa Valley. The agreement was recorded in a deed and subject to registry at the Land Registry, as legally required. The deed records that Rewilding Portugal's purposes include promoting the return of wild nature, including fauna and flora, in different parts of Portugal.

The deed then records that the object of the superficies right is to allow the properties to follow their natural processes, without intervention and without any extractive activity, subject to mandatory legal obligations. This is the central legal move: we translated the rewilding purpose into the framework of an existing Portuguese property right.

We kept the formulation concise, expressly referring to article 1524 and defining the object in terms of natural processes. For future replication, practitioners may wish to make the statutory superficies content even more explicit, for example by referring to planting, maintaining native vegetation or plantations, and maintaining ancillary works necessary for restoration, access, monitoring, or other rewilding purposes. This may help reduce the risk of registration difficulties or later arguments about non-use or extinction.

## The key drafting innovation: non-intervention as use

The most important feature of the deed is how it treats passive rewilding.

Rewilding may involve active restoration, but it may also involve allowing natural processes to unfold with limited human intervention. In ordinary property law terms, that can create a risk that “doing less” is misunderstood as abandonment, non-use, or failure to exercise the right, which, for a superficies right, may mean losing it.

We addressed this directly. The deed states that, because the superficiary's activity will be essentially passive or non-interventionist, that non-action does not constitute non-use of the properties or waiver of the superficies right.

**For anyone using a superficies right for rewilding, it is important to state expressly in the deed that management led by natural processes, non-intervention, and the absence of extractive activity are part of the intended exercise of the right, and do not amount to abandonment, non-use, or waiver.**

It is the clearest practical lesson of the case: passive restoration is not neglect, it is an intentional ecological and legal choice, and the legal drafting should say so.

## Why this worked in practice

In Portugal, foundations are addressed in the general regime of legal persons in the Civil Code, but the main statutory framework is the Lei Quadro das Fundações. In practice, creating a foundation is about establishing three things: a clear purpose, assets dedicated to that purpose, and recognition by the competent public authority.

A foundation is not fully operational simply because its founders decide to create it. In Portugal the process has several stages (see table).

These steps look linear, but in this case, we learnt that they should not all progress at the same pace. The statutes and assets position should be substantially agreed before the project runs too far to the later and harder to reverse steps such as booking the notary to sign the deed, preparing the recognition request, setting up banking, or transferring assets.

We have created a checklist at the end of this document which summarises the main procedural steps followed by Rewilding Portugal.



Juan Carlos Munoz/Rewilding Europe

## Operational value and future flexibility

The deed also gives Rewilding Portugal, and any successor, room to manage the land flexibly over time. It can create further rights over the land, such as easements, and enter into management agreements or other contracts relating to the properties. Because the 30 hectares sit across several neighbouring properties, easements can also be used to secure access and connectivity between them and/or in relation to other properties.

Future arrangements may involve technical partners, researchers, other rewilding organisations, neighbouring landowners, grazing agreements, access rights, monitoring arrangements, or other legal structures and such possibilities are catered for in broad terms the drafting of the superficies right.

The properties also sit next to a private protected area. This creates potential for Rewilding Portugal to engage with neighbouring land managers or owners on wider landscape measures, including natural grazing, ecological connectivity, and coordinated habitat management.

One legal feature to keep in mind if the right is ever transferred: if Rewilding Portugal, or its successor, sells the superficies right, the landowner has a pre-emption right and must be given first refusal, with a short period to exercise it. This right is not reciprocal: the beneficiary has no equivalent pre-emption right if the landowner sells the underlying land, although the right runs with the land in such case.

## Hunting and no-hunting challenges

The deed anticipates that the land may be designated as a right not to hunt area (*zona de direito à não caça*), and provides that Rewilding Portugal, or its successor, must respect such a zone if declared by the competent authorities. The Lifescape Project developed a legal guidance note on aspects relating to hunting and rewilding: see [our note](#) for further information on this type of designation.

In practice, hunting raises a wider issue. The properties lie within an existing hunting area managed by a hunting association. Formally removing the properties from the hunting area may support the rewilding objective, but it may also affect the legal viability of the wider hunting zone. Conversely, leaving the land within the hunting area without further safeguards may not provide sufficient protection against hunting pressure or poaching.

One option is to keep the properties formally within the hunting area but reach an agreement with the hunting association that no hunting will take place on those properties. This could potentially avoid undermining the wider hunting area whilst creating a practical no-hunting outcome on the land. However, this would need to be carefully checked under the applicable hunting rules with the competent authorities.

The key lesson is that a superficies right does not automatically resolve all hunting issues. Where land sits within an existing hunting area, practitioners may need to engage directly with the hunting association or manager and consider whether a separate agreement, administrative step, or formal no-hunting process is required.



Nelleke de Weerd/Rewilding Europet

## Legal formalities

A superficies right must be created by a formal title and then registered. Its constitution is valid only if made either by public deed (*escritura pública*) or by authenticated private document (*documento particular autenticado*). The two options carry equal legal weight, the difference is who formalises the act: a notary for a public deed, or a lawyer or *solicitador* for an authenticated private document.

This second option can be more flexible and, in some cases quicker and less costly. The title must then be correctly registered at the Land Registry. Registration is required under Article 2(1)(a) of the Land Registry Code, and under Article 5(1) a registered right only takes effect against third parties from the date of registration. If registration is not done correctly, the right will not be enforceable against third parties including future owners of the land.

This is what makes the superficies rights more robust than a purely contractual arrangement. A contract may bind the original parties, but it is usually weaker if the land is later sold, inherited, or otherwise transferred. By contrast, a registered property right can have legal effects beyond the original parties. In practical terms, this means that the right can be said to “run with the land”: it is attached to the land and capable of binding successors, rather than depending on the personal relationship between the original parties.

In this case, we created the superficies right by public deed and registered it, showing that the superficies right can move from a theoretical possibility to an implemented tool for securing land for rewilding.

## What this model can and cannot do

This case does not mean that Portugal now has a dedicated conservation instrument. The superficies right is not a full substitute for a dedicated conservation or rewilding land mechanism such as a conservation covenant. For that, the Lifescape Project is working on another project to explore how a dedicated conservation mechanism could be created and implemented in Portugal. See more information about this in our *Rewilding Innovation Lab*.

The superficies right is an existing property law tool with its own legal requirements and limits. It works where a landowner supports rewilding but does not want to transfer full ownership over it, and where the project can be framed within the legal structure of a superficies right. It is especially relevant where the parties want a registered arrangement with effects beyond a personal contract.

To make it effective it is vital to pay close attention to careful drafting, proper registration, landowner commitment, wider legal regimes, and sometimes further agreements.

The broader lesson, and an encouraging one, is that long-term rewilding protection does not always need to wait for legal reform. In the right cases, existing property law can be adapted to secure land for nature. Used carefully and realistically, with a clear eye on both its strengths and limits, it is a tool more organisations and practitioners could be using.

## KEY HURDLES AND PRACTICAL LESSONS

We have identified three key lessons from our work with Rewilding Portugal which should be taken forward by others wanting to establish similar property rights:

1. **Ensure it is drafted as a genuine superficies right**, meaning that it must respect and comply with the fundamental aspects of a superficies right (e.g. a right to undertake / maintain specified works or plantations);
2. **Ensure it is properly registered at the Land Registry** so it runs with the land and binds future owners of the land; and
3. **Draft the legal document so that it refers expressly to passive rewilding** being the intended use under the superficies right.



The table below sets out the full picture and the key lessons we want to pass on to other rewilding practitioners to support wider use of these property rights for this innovative purpose.

HURDLE	WHY IT MATTERS	PRACTICAL LESSON
<b>GENERAL</b>		
<b>Need for long-term land security without ownership transfer</b>	Defines whatewilding Portugal needed a durable legal position which would bind future owners of land it manages but did not own. A contract alone may be too weak if ownership changes. the foundation exists to protect.	A superficies right can be useful where the landowner retains ownership but grants long-term surface rights. Proper registration of the right is essential.
<b>Landowner motivation was essential</b>	The landowner had to agree to a gratuitous, perpetual right.	Trust, shared values, safeguards, and possible incentives matter.
<b>No specific tax incentive appears available</b>	This may limit wider uptake.	Fiscal incentives or fee reductions should be considered in future policy work.
<b>The land is part of a wider landscape</b>	It is adjacent to a Private Protected Area.	The right can support future cooperation on grazing, connectivity, and management.
<b>The land sits within a hunting area</b>	Excluding it may affect the viability of the hunting zone.	Engagement with the hunting association may be needed, possibly through a no-hunting agreement.
<b>Public law still applies</b>	Private rights cannot override mandatory law.	Land-use, environmental, hunting, forestry, tax, and registration rules must be checked separately.
<b>DRAFTING</b>		
<b>Superficies has defined legal content</b>	It is not a generic conservation instrument.	The deed should include the legal hook of building/maintaining works or planting/maintaining plantations.
<b>Risk of rights being extinguished</b>	The right may be extinguished if agreed building/planting or rebuilding/replanting is not carried out within the relevant period.	The deed should clearly state the activities and how they relate to rewilding.
<b>Passive rewilding may look like non-use</b>	Non-intervention could be misunderstood as abandonment or waiver.	The deed should expressly state that passive rewilding is an intended use.
<b>Future flexibility may be needed</b>	Rewilding projects evolve.	It can be useful to include powers to enter management contracts and create further rights over the land in the deed.

## ACKNOWLEDGEMENTS

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## FIND OUT MORE



[www.thelifescapeproject.org](http://www.thelifescapeproject.org)



[www.rewilingeurope.com](http://www.rewilingeurope.com)



[www.rewiling-portugal.com](http://www.rewiling-portugal.com)

## GET IN TOUCH IF YOU FIND SIMILAR ISSUES

If you are working with large herbivores and rewilding or you are running into the same obstacles in your jurisdiction, the Lifescape Project would like to hear from you. We're glad to share what we've learned and to learn from your experience.

Get in touch at [stephanie.smith@lifescapeproject.org](mailto:stephanie.smith@lifescapeproject.org)

(Managing Lawyer- Rewilding Law)

or [catarina.prata@lifescapeproject.org](mailto:catarina.prata@lifescapeproject.org)

(Senior Rewilding Lawyer)

