

Rewilding in Germany

Legal Mechanisms for Securing and Protecting Wild Land

*A aerial view of rewetted peat bogs and the Peene River, Mecklenburg-Vorpommern, Mecklenburg-Western Pomerania, Germany
Florian Möllers / Rewilding Europe*

Core topics

- Key considerations when securing land for rewilding
- Private law mechanisms available to obtain and secure land for rewilding
- Public law mechanisms useful for securing land for rewilding

Key takeaways

- 1 Where possible, ownership of land offers the most security and the best long-term protection to secure the ecological gain achieved with rewilding .
- 2 Apart from ownership, other property rights offer varying degrees of long-term security and protection of rewilding gains. Seeking proper legal advice is strongly recommended.
- 3 Different rights can be used in combination to secure greater protection of land; proper legal advice is strongly recommended
- 4 There are contractual and public law mechanisms which can offer some protection to rewilded land. However, these protections are indirect and require engagement with relevant authorities.
- 5 Protected areas are designated by law and managed by public authorities.

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1. What should be considered when securing land for rewilding?

Rewilding projects require land and, once land is secured, it is crucial to ensure that it remains dedicated to rewilding for as long as possible, ideally in perpetuity.

Without legal protection, the ecological restoration achieved through rewilding may be lost if future landowners do not share the same vision.

Similar risks arise if pre-existing contractual arrangements require the land to be restored to its original state. This can be problematic, as rewilding inherently involves altering the landscape.

Practitioners

should carefully examine existing agreements and, where necessary, negotiate their removal or explicitly stipulate that rewilding changes will not constitute a contractual breach.

This note outlines methods available under German law to ensure that rewilding gains are preserved long-term. Access to land can be secured through ownership and other rights *in rem*, as well as through contractual mechanisms such as lease agreements. German law also provides public law mechanisms that may support access to and protection of rewilded land.

2. What are the key legal mechanisms available to secure land for rewilding? How useful are they for this purpose?

In Germany, access to land may be achieved through ownership and other property rights (rights *in rem*). Rights *in rem* provide legal authority over the land to a beneficiary who is not the owner (see subsection 2.2, 2.3, and 2.4).

Encumbering a property with a right *in rem* requires an agreement between the person entitled to grant such rights (usually the owner or an authorised third party) and the beneficiary. The change must then be registered in the Land Register (*Grundbuch*). Registration ensures enforceability against third parties, meaning any new landowner is bound by the encumbrance.

Contractual mechanisms such as lease agreements can also secure land for rewilding, though these do not offer the same permanence as rights *in rem* (see subsections 2.4 and 2.6).

This section examines the legal instruments available for securing land for rewilding and assesses their usefulness in ensuring long-term protection. A summary comparison table is provided at the end of this section.

Some public law mechanisms may safeguard rewilded protected areas for the long term, these are dealt with in section 3.

2.1 Ownership right (Freehold Title)¹

What does ownership of the land mean?

Ownership is the strongest form of property right under German law, granting full control over the use, benefit, and disposal of land. Owners can generally deal with their land at their discretion and exclude others from using it, subject to legal restrictions (*Ausschluss- und Nutzungsfunktion*).²

What formalities are required to gain ownership of the land?

The right of ownership is acquired through contractual agreement³, inheritance⁴, or by prescription⁵.

When land is acquired by agreement, two distinct legal steps are required:

- **Purchase or donation agreement:** this creates a contractual obligation to transfer ownership but does not itself transfer the title.
- **Contract *in rem* (*Auflassung*) and entry in the Land Register:** this contract must be declared in the presence of both parties before a competent agency (e.g. a notary) and the change of ownership must be registered in the Land Register to be legally valid and enforceable.⁶

Acquisition by prescription occurs when a person is incorrectly recorded as owner in the Land Register but acquires ownership, provided the entry remains unchallenged for 30 years and they have possessed the property throughout this period.⁷

Ownership is only legally enforceable once it is registered in the Land Register. Registration ensures that ownership is recognised not only between the parties but also against third parties. Practitioners should seek legal advice on the registration process and its implications for securing long-term conservation goals.

It is important to note that whenever there is a change of ownership – e.g. due to sale of the land to a third party or by death of the original owner (in case of an individual) – the new owners might have different plans as to how to manage the land and may decide to pursue actions which harm the nature restoration achieved through rewilding.

Is ownership of land useful for rewilding?

Ownership provides the strongest legal protection for rewilding. If the land is owned by a rewilding-focused entity, long-term protection is significantly more secure, as rewilding gains will be safeguarded at the discretion of the organisation.

However, if the land is owned by an individual, rewilding efforts may be at risk due to inheritance or sale. Successors may not share the original

owner's conservation goals and could choose to alter or develop the land.

To mitigate this risk, it is important to carefully consider who holds the title and explore legal mechanisms that reinforce long-term protection. Ownership can also be combined with public law protections to further secure the land's rewilding status.

2.2 Easements

What are easements?

Easements grant specific rights of use over land to non-owners. For example, an easement may allow a person to access their property across third party land or permit the grazing of animals on land they do not own.

Generally, easements enable the beneficiary to enjoy certain uses and benefits of the land, but they can also be created to restrict or prohibit specific activities.

There are two key types of easements in German law:

- **Ground Easements (*Grunddienstbarkeiten*)⁸**
 - a burden imposed on one property (the servient estate–*dienendes Grundstück*) for the benefit of another property (dominant estate–*herrschendes Grundstück*) owned by a different party.

- **Restricted personal easements**

(*beschränkte persönliche Dienstbarkeiten*)⁹ – a right granted to a specific individual or entity to use land in a defined way. These easements cannot be transferred unilaterally. For example, a restricted personal easement could allow a rewilding organisation to carry out restoration work whilst restricting the landowner from undertaking activities that would harm rewilding benefits.

What formalities are required to create easements?

Both types of easements can be established by natural or legal persons and are usually created through a written, notarised agreement. They may be granted free of charge or in exchange for payment.

However, it is essential to register the easement in the Land Register. Without registration, the easement does not legally exist as right *in rem* and remains a mere contractual obligation between the original parties. This means:

- If the easement is not registered, it becomes ineffective against future owners of the land; and
- If the easement is registered, the beneficiary retains their rights regardless of any transfer of land ownership. In effect, the easement runs with the land.

How long can easements last?

Both ground easements and restricted personal easements may be created for either a fixed term or an indefinite period. However, their duration and termination differ:

- **Ground Easements:** these are permanently attached to the dominant estate and remain in force even if ownership changes.
- **Restricted personal easements:** if granted indefinitely, they expire upon the death or dissolution of the beneficiary. Whilst they usually cannot be transferred, their exercise may be assigned to another party.

Regardless of the term, an easement may automatically terminate in the following cases:

- **Voluntary release:** if the beneficiary no longer requires the easement, it may be removed by Deletion Approval ;¹⁰
- **Merger of properties:** a ground easement ceases if the dominant and servient estates become a single plot of land registered in the Land Register;
- **Expropriation or forced sale:** if the servient land is expropriated or sold in forced auction, the easement may be extinguished; and

- **Good-faith acquisition without the encumbrance:** if a third party purchases the servient land in good faith and the easement was not properly registered, the right might be lost¹¹.

If a ground easement becomes burdensome to the servient property owner, it may be adjusted if:

- The purpose of the easement can no longer be fulfilled; or
- The burden on the servient estate is disproportionate to the benefit gained by the dominant estate.



These cases are decided on a case-by-case basis, applying the principle of “good faith”.¹²

Additionally, if the benefit of an easement permanently ceases to exist, the easement automatically terminates. For example, if an easement permits mineral extraction, but the minerals are exhausted, the right becomes void.

Are easements useful for rewilding?

Easements can be valuable tools for securing land access and long-term protection when purchasing land is not an option. Their usefulness for rewilding depends on the type of easement:

- **Ground easements:** these can ensure long-term land connectivity, such as securing access for grazing animals across multiple properties. For example, an easement could facilitate transhumance by allowing large herbivores to roam freely between two properties. However, one challenge is that the dominant estate must derive a tangible benefit from the easement. This means that (i) the rewilding organisation must own a dominant property; and (ii) the easement must provide a recognised benefit to that property.
- **Restricted personal easements:** these can impose prohibitions on harmful activities (e.g. logging, construction) to protect rewilded land. When granted indefinitely, they can

ensure rewilding is maintained as long as the beneficiary exists. However, because they expire upon the death or dissolution of the beneficiary, it is critical to ensure that the beneficiary has long-term stability. Suitable beneficiaries may include a public body (e.g. local authority or national park authority), or a private law association devoted to nature restoration. To further reinforce protection, public law instruments – such as zoning laws or public law contracts – can be used to secure the same purposes as the easement.

Another key advantage of ground easements over restricted personal easements is that they do not expire upon the death of a natural person. Instead, they remain attached to the dominant estate and transfer to heirs automatically. This feature makes ground easements more durable in some cases, provided that the dominant property can meet the legal requirements for the easement.

2.3 Usufruct rights (*Nießbrauchrechte*)¹³

What are usufruct rights?

Usufruct grants the right to benefit from another’s land by using it and enjoying its profits (“fruits”, *Früchte*¹⁴). However, certain benefits may be explicitly excluded in the agreement.¹⁵

The prevailing legal view suggests that the benefits do not have to be purely economic. This means that

using land for restoration purposes could constitute a valid usufructuary benefit.

A key legal question is whether usufruct rights can be granted with the sole aim of non-interference (i.e. leaving the land untouched for rewilding). Since non-use may contradict the nature of usufruct, practitioners should seek legal advice to clarify how a non-intervention approach could be structured within a usufruct agreement.

Usufructs can be granted to both natural and legal persons:

- If the beneficiary is a natural person, the usufruct expires upon their death; or
- If the beneficiary is a legal entity, the usufruct ends when the entity ceases to exist (e.g. through dissolution or liquidation).

Although usufruct rights can generally not be transferred, their exercise may be delegated to another party.¹⁶ For example, if a rewilding organisation holds a usufruct over a forest, it may permit a third party to collect acorns for reforestation projects elsewhere.¹⁷ The usufructuary organisation remains the legal beneficiary, but it assigns a specific use without granting any usufruct rights to the third party.

What formalities are required to create usufructs?

A usufruct can be paid or unpaid, depending on the parties' agreement. However, for it to be legally binding against third parties, it must be registered in the Land Register.

Once registered, a usufruct "runs with the land", meaning that the usufruct remains enforceable even if the land is sold. The new landowner must respect the usufruct until it legally expires.

How long can a usufruct last?

A usufruct can be granted for a fixed term or an indefinite period. Whilst it cannot be granted in perpetuity, indefinite usufructs – particularly when granted to legal entities – can offer long-term security for rewilding projects.

Regardless of the term, usufructs automatically terminate in the following cases:

- Death or dissolution of the beneficiary;
- Voluntary release and subsequent Deletion Approval¹⁸;
- Expropriation of the land;
- Forced sale of land in a foreclosure proceeding; and
- Good-faith acquisition without the encumbrance (if a third party purchases the land in good faith and the usufruct was not properly registered, the right might be lost).¹⁹

A key advantage of usufruct is that, once granted, it remains enforceable even if the land is transferred to a new owner, making it a robust option for securing land for rewilding.

Are usufruct rights useful for rewilding?

Usufruct rights provide the beneficiary with broad, undetermined rights of use that are enforceable against third parties, including the landowner. This flexibility makes usufruct a strong legal tool for securing land for rewilding.

However, landowners may be reluctant to grant usufruct rights due to their broad scope. This may lead to higher fees being required for usufruct agreements compared to other property rights.

Despite this, usufruct agreements can be customised to balance the needs of both the landowner and the beneficiary, increasing the likelihood of successful negotiations.

Like restricted personal easements, usufruct rights expire when the beneficiary ceases to exist. However, they remain protected from termination even if the land is sold.

In summary, these are the key benefits of usufruct for rewilding:

- **Long-term security:** whilst not perpetual, usufruct can last indefinitely if granted to a legal entity;

- **Remains enforceable after land transfer:** the new owner must respect the usufruct agreement; and
- **Difficult to terminate:** the landowner cannot revoke the usufruct at will.

Practitioners should carefully assess the scope of usufruct rights, particularly regarding non-intervention approaches, as legal uncertainty over whether leaving land untouched qualifies as a valid usufruct use.

Example 1

Landowner A recently bought a piece of land with some of the last remaining old-growth forests in the country. She wishes to retain ownership but does not intend to interfere with the land. Her goal is to permanently secure its wilderness and ensure that no future owners - including her heirs - can alter its natural state. She is particularly concerned that her descendants, who do not share her conservation values, may fell the trees for timber.

Are there any private law instruments to protect the land to the level intended by the landowner?

One option is to grant a usufruct over the land to a rewilding organisation, which would manage and protect the property in

accordance with Landowner A's rewilding goals.

The beneficiary (the rewilding organisation) would have the right to fully use, enjoy, and manage the land, whilst Landowner A retains property.

However, since Landowner A intends to leave the land undisturbed, a key legal question arises: does non-interference qualify as a valid form of "drawing benefits" under usufruct law? As this issue is not fully settled, Landowner A should seek legal guidance on structuring the usufruct agreement to accommodate a non-interventionist rewilding approach.

A key advantage of usufruct rights is that they remain valid until the beneficiary ceases to exist (e.g. if the rewilding organisation is dissolved). Additionally, usufructs run with the land, meaning they are binding on Landowner A's heirs and any future owners. However, to be enforceable against third parties, the usufruct must be registered in the Land Register.

An alternative to usufruct is a restricted personal easement, which could be granted to a rewilding organisation. The agreement could explicitly restrict or prohibit specific activities on the land, such as felling trees or developing infrastructure.

Like usufruct, a registered restricted personal easement would be binding on future owners.

However, it would terminate if the rewilding organisation, as beneficiary, were dissolved or if it voluntarily surrenders its right through a Deletion Approval.

In conclusion, both usufruct and restricted personal easements offer strong legal protection for securing rewilding goals. If Landowner A seeks broad management rights for a rewilding organisation, a usufruct may be the better option - provided that the issue of non-use is properly addressed. However, if the priority is to restrict harmful activities (such as logging), a restricted personal easement may be more suitable.

Regardless of the chosen mechanism, registration in the Land Register is essential to ensure the protection remains legally binding on future owners.

2.4 Charge on land (*Reallast*)²⁰

What are charges on land?

A charge on land is a legal encumbrance that requires the landowner to perform recurring obligations or provide specific benefits to a beneficiary, either an individual or a legal entity. It is attached to the land, meaning that any future owners are automatically bound by the obligation. These obligations can include financial payments (e.g. an annual fee to a rewilding organisation),

provision of goods (e.g. delivering harvested goods), or land management duties (e.g. maintaining a specific habitat). Like easements, charges on land can be **personal charges on land**, when the benefit is for an individual or legal entity irrespective of their ownership of a plot of land²¹; or **subjective *in rem* charges on land**, when the benefit is for the owner of a plot of land²². So, in terms of the beneficiary, the former mirrors the restrictive personal easement whilst the latter mirrors the ground easement.

A key characteristic of a charge on land is the recurring nature of the acts as it imposes a continuous duty on the landowner to perform certain acts or provide benefits at regular intervals.

Generally, a charge on land ensures:

- **Flexibility:** it allows for a wide range of recurring obligations, not just financial payments.
- **Durability:** it remains binding even when the land is sold or is inherited.
- **Security for the beneficiary:** once registered in the Land Register, it becomes legally enforceable against all future landowners.

A key advantage is that even with personal charges on land, the beneficiary's right can be transferred, unless the agreement explicitly prohibits this. As a result, a rewilding organisation can assign the right to another entity, ensuring continuity of the

rewilding efforts over time. The transfer of the (personal) charge on land must be recorded in the Land Register.

What formalities are required to create a charge on land?

A charge on land must:

- Be established through an agreement between the landowner and the beneficiary, ideally in the form of a notarised deed;
- Clearly define the recurring obligations imposed on the landowner; and
- Be registered in the Land Register to bind future owners.

Without registration, the charge does not run with the land and would only be enforceable as a private contractual obligation between the original parties.

How long can a charge on land last?

A charge on land can be created for a fixed term or an indefinite period. Indefinite charges provide long-term security, ensuring that obligations remain in place until formally extinguished.

For instance, a charge on land could be used to maintain certain lands as open pastures for natural grazing, or to protect specific habitats from disturbance (e.g. preserving wetlands), or to enforce ongoing rewilding commitments.

A charge on land may be terminated through:

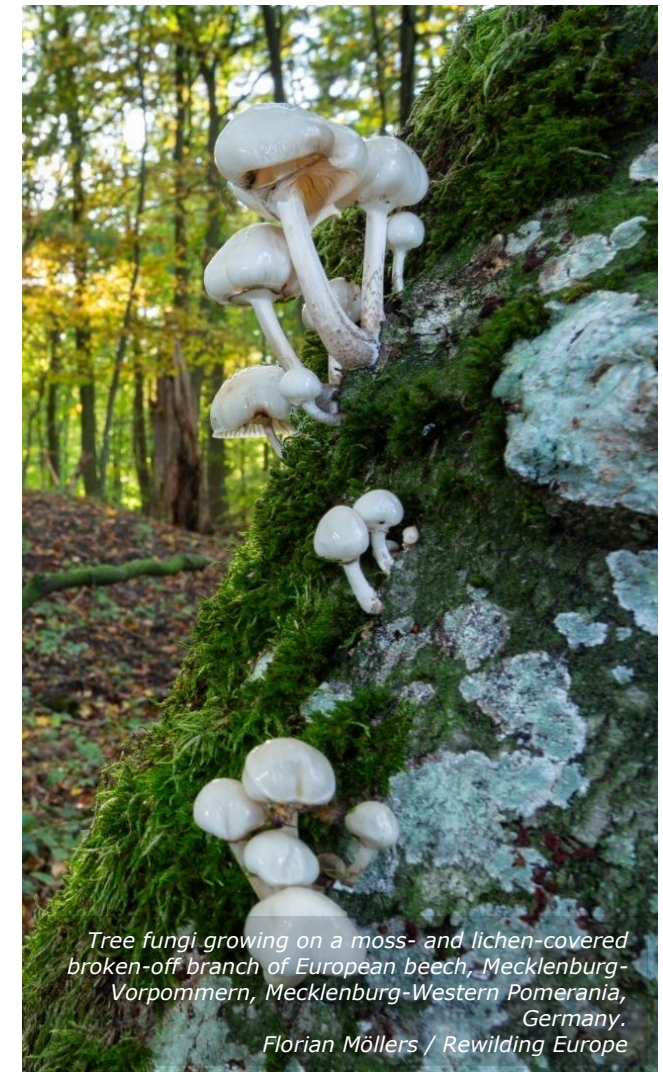
- Expiration of the fixed term;
- Mutual agreement between the landowner and beneficiary (must be registered in the Land Register);
- Voluntary release: the beneficiary can release the obligation through a Deletion Approval²³;
- Redemption by the landowner: if the agreement allows, the landowner may “buy out” the charge (e.g. through a lump sum payment or fulfilling another agreed condition). This must be registered in the Land Register;
- Expropriation or forced sale: the charge may be removed in cases of compulsory acquisition; or
- Good-faith acquisition without the encumbrance (if a third party purchases the land without the knowledge of the charge, and it was not properly registered, the right might be lost).²⁴

Are charges on land useful for rewilding?

A charge on land is a valuable tool for long-term rewilding because it ensures that obligations remain enforceable even when ownership changes.

By requiring landowners to maintain natural habitats, or undertaking (or commissioning)

ecological monitoring, a charge on land provides legal certainty that rewilding commitments continue over time.



Not only are charges on land a good option to secure long-term protection but they also ensure enforceability. This means that a rewilding organisation, as the beneficiary, can enforce the obligations if the landowner fails to maintain rewilding efforts.

Another key advantage is that it may allow for specific recurring rewilding actions to be enforced, such as seasonal habitat maintenance, promoting rewilding-focused land uses or allowing monitoring duties, rather than just restricting land use. However, this mechanism has not been extensively tested before the courts, which leaves a degree of uncertainty whether courts will uphold them in rewilding contexts. Proper legal advice is, therefore, strongly recommended.

Charges on land are similar to conservation covenants in British law, which allow landowners to impose legally binding conservation commitments on their property. However, unlike covenants, charges operate under Germany's property law framework, ensuring that obligations run with the land indefinitely.

For more information on conservation covenants, see [England and Wales: Conservation Covenants and Legal Protection of Wild Land](#).

It might be said that charges on land are not suitable for rewilding purposes because the landowner retains discretion over how to fulfil their obligations. Whilst this is a valid concern, it is not a fundamental flaw but rather a drafting challenge.

If the terms of the charge are too vague, the landowner may have broad flexibility in determining how to meet the obligations. However, a well-drafted charge on land can mitigate this by specifying precise rewilding actions, including measurable outcomes, and mandating regular monitoring.

With careful legal drafting, a charge on land offers both flexibility and enforceability, making it valuable tool despite the concerns raised.

For these reasons, practitioners should seek proper legal advice to ensure that rewilding-related charges on land are drafted with the necessary clarity and specificity to prevent future disputes or loopholes.

Example 2

Landowner B inherited a 50-hectare estate bordering a protected nature reserve. They wish to use the land as a buffer zone for the protected area, through rewilding, but need guidance.

Landowner B reaches out to a rewilding organisation to discuss, implement, and oversee a rewilding project focusing on grass and wetlands, and existing habitats and ecosystems.

Can Landowner B create a charge on land with this purpose? If so, how would this charge on land work to make sure that Landowner B's vision comes true and stays protected for the long-term?

By partnering with a rewilding organisation, Landowner B can establish a charge on land in favour of the organisation. This would legally bind both themselves and all future owners to specific rewilding obligations, ensuring that conservation commitments persist over the long term. A charge on land is particularly useful in this case because it imposes positive obligations,

ensuring active restoration efforts rather than simply restricting land use. The agreement could require Landowner B (and any future landowners) to undertake specific, recurring conservation actions, such as:

- maintaining natural vegetation mosaics (e.g. preserving grasslands and wetlands);
- undertaking ecological monitoring, wildlife surveys, and habitat maintenance;
- maintaining wildlife corridors to facilitate species movement;
- implementing seasonal protection for species during breeding seasons; or
- making annual financial contributions to fund rewilding management efforts.

To be effective the charge on land must be indefinite or set a long-term duration to ensure continuous ecological protection and be registered in the Land Register to bind future owners.

In addition, careful drafting is essential. The agreement should include:

- clearly defined rewilding obligations (each obligation should be precisely described);
- limited redemption options (to avoid premature termination, conditions for buying out the charge should be strictly regulated or excluded altogether);

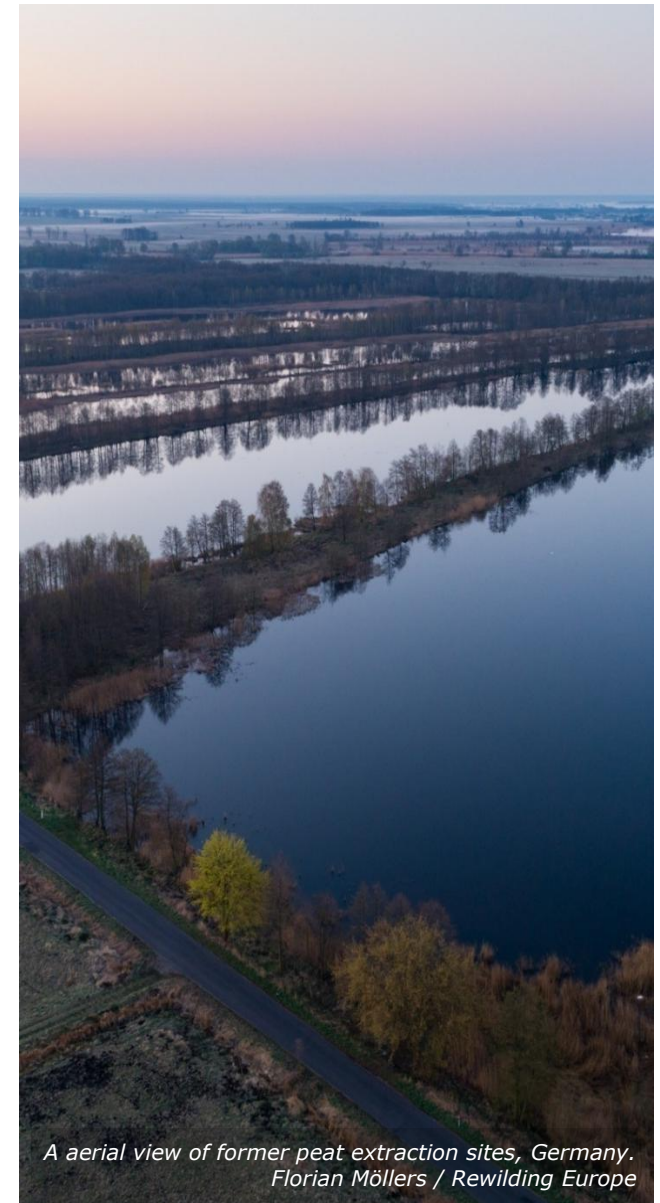
- approval requirements for waivers and cancellations (any modification or removal of the charge should require explicit consent from the rewilding organisation or a relevant authority); and
- enforcement mechanisms (the rewilding organisation must have the legal right to intervene if the landowner fails to meet their obligations).

Legal advice should be sought as there are technical limitations in regard to what can be an enforcement mechanism in the context of charges on land in the rewilding context.

By registering the charge on land, Landowner B ensures that future owners remain bound by its obligations, protecting the land's ecological integrity.

Additionally, the rewilding organisation, as the beneficiary, may transfer its rights to another organisation, provided the original agreement allows it. This ensures that even if the initial organisation ceases to exist, the rewilding obligations remain intact.

In any case, legal advice is highly recommended to ensure that the charge is properly structured, avoiding loopholes that could weaken its effectiveness.



*A aerial view of former peat extraction sites, Germany.
Florian Möllers / Rewilding Europe*

2.5 Lease Agreements²⁵

What are lease agreements?

A lease agreement is a contract in which a landowner (the landlord) grants the tenant the right to use a property for a specified period in exchange for rent.

The tenant's right to use the property is limited to the agreed purpose and must be exercised with due diligence. At the end of the lease, the tenant must return the property. Whilst German law does not specify the exact condition in which leased land must be returned, it is commonly understood that it should be consistent with contractual or customary use.

For rewilding, it is important to ensure that any ecological gains achieved during the lease are respected and maintained when the land is returned.

The lease agreement should clearly define the permitted use (e.g. habitat restoration), specify the condition of return (e.g. "the land will be returned with all ecological gains intact"), include provisions for compensation if the land's value increases due to rewilding (e.g. restoration of wetlands or native vegetation).

The agreement can include a contractual mechanism to compensate the tenant for improvements made to the land. This could

specifically define "improvements" to include ecological gains, ensuring that restoration efforts are recognised as valuable contributions.

What formalities do lease agreements require?

Lease agreements may be concluded between natural or legal persons and do not require registration in the Land Register. However, even if not registered, leases do usually bind future owners²⁶ and heirs of the landlord²⁷.

In both cases, the new landlord needs to end the existing lease, including following any applicable rules or agreements regarding the ending of the lease.

Additionally, lease agreements must be in writing if they exceed one year. The lease should include key details such as property address, rental amount, duration, and maintenance and repair obligations.

For rewilding, it is advisable to include specific rewilding terms, conditions for returning the land, and compensation provisions for improvements made by the tenant. Practitioners should get legal advice to draft these agreements to avoid any irregularities that may compromise the success of the rewilding efforts.

How long can lease agreements last?

Lease agreements may be for a definite or indefinite period.²⁸ The rule is that definite leases end at the agreed date and indefinite leases continue until

terminated by either party. There are some deviations to the rule, as explained below.

In definite leases, these end at the agreed date and neither the landlord nor the tenant can terminate early without a special legal reason, such as mutual agreement or for cause²⁹. At the end of the definite period, the lease can be extended because parties mutually agree to it or there is a tacit renewal.³⁰

In summary:

- If a definite lease expires, the lease ends automatically unless extended;
- Definite leases can be extended because the tenant stays and the landlord does not object (tacit renewal until express termination);
- If the parties agree to extend, they can set a new fixed term or change it to an indefinite lease; and
- If the landlord objects to the renewal before the term ends, the lease ends as planned.

A definite lease may be for more than 30 years.³¹ In this case, either party (landlord or tenant) may terminate it after 30 years, despite the agreed term. The notice must be sent at least 6 months before the termination date and the terminating party does not need to provide a specific reason to end the lease. Practitioners should note that shorter notice periods may apply.³²

Rewilding practitioners considering long-term leases should be aware of the 30-year rule. If a lease exceeds 30 years, either party may unilaterally terminate it, potentially undermining long-term ecological restoration efforts. To avoid this risk, alternatives such as usufruct rights or charges on land may provide more secure, long-term protection for rewilding projects.

For indefinite leases, the 30-year threshold does not apply. This means that standard termination rules apply and there is no automatic right to terminate just because it lasted more than 30 years.

Are lease agreements useful for rewilding?

Whilst leases do not provide the same level of security as rights *in rem*, they can still be valuable tools for rewilding in certain situations.

Leases are a good option when:

- Flexibility is needed: leases are easier to renegotiate than rights *in rem*, making them ideal for short-to-medium term projects or pilot rewilding trials (e.g. testing different methods over 10 years);
- Ownership control is important: a lease may be preferable when landowners want to retain full control whilst still allowing rewilding. This is useful if a landowner supports rewilding but wants the option to change land use later;

- Costs and administrative burdens must be low: leases involve lower costs and less legal complexity than *in rem* rights. This can be crucial for rewilding organisations needing to lease multiple small parcels without incurring significant upfront costs; and
- Third party interests must be limited: unlike *in rem* rights, leases do not create a permanent encumbrance on the land. This means a landowner can lease land for rewilding whilst retaining the option to sell it later without long-term obligations.

2.6 Usufructuary Leases (*Pacht*)³³

What are usufructuary leases?

A usufructuary lease combines elements of lease agreements and usufruct rights, allowing a tenant to use a property and enjoy its fruits, i.e. the products and other yield obtained from it.

Whilst usufruct rights are *in rem* (real rights), both standard leases and usufructuary leases are contractual rights, meaning they only bind the landlord and tenant³⁴ and do not require registration in the Land Register. In contrast to standard leases, usufructuary leases not only grant the right to use the property but also to enjoy its fruits (e.g. natural animal and soil products, income generation).

Since usufructuary leases are contractual in nature, they mostly follow the same formal requirements, duration rules, and termination provisions as standard lease agreements, unless otherwise specified by law or contract (see subsection 2.5). Note that one specific provision that applies to usufructuary leases is the period of notice, when not specified.³⁵ This consistency ensures that usufructuary leases remain economically and functionally distinct whilst aligning with the broader framework of land use agreements.

Are usufructuary leases useful for rewilding?

Usufructuary leases offer significant advantages over standard lease agreements, particularly in rewilding projects where deriving benefits from the land (rather than the mere use) is essential.

This may be the case where generating revenue through eco-tourism, sustainable grazing, biodiversity credits, or carbon offset schemes can support restoration efforts.³⁶

A standard lease agreement would not permit such economic activities unless explicitly allowed by the contract, in which case it would no longer be a standard lease, but a usufructuary lease. Additionally, usufructuary leases often require the tenant to maintain and manage the land, aligning well with land stewardship principles crucial for rewilding.

Moreover, landowners retain ownership whilst granting control to organisations or individuals dedicated to rewilding, allowing them to set restoration conditions in the lease. This makes usufructuary leases a flexible alternative to long-term rights *in rem* (such as usufruct) whilst providing more autonomy than a standard lease.

Below, practitioners can find some real-life rewilding scenarios demonstrating when different mechanisms are most useful for securing and protecting wild land.

Example 3

Landowner C has recently purchased a parcel of land and plans to convert it into a permanent meadow with native forage and grasses. To maintain and enhance the land's ecological value, Landowner C intends to release a herd of Taurus to graze, ensuring a self-sustaining landscape.

To secure the long-term ecological integrity of the land, Landowner C wants to ensure that future owners cannot degrade or convert the land into general agriculture use.

Adjacent to Landowner C's land is another parcel owned by Landowner D, which has similar soil characteristics but is currently unused. Landowner D supports Landowner C's

rewilding efforts and agrees that their land should be used as an extension of the permanent grazing pasture, also to be converted into a permanent meadow.

1. What type of agreement could be put in place between the two landowners to record and enact such collaboration in practice? How would such an agreement affect the future use of each area of land?

If Landowner D wants to support Landowner C's efforts but is not willing to give up ownership or control, they could enter a usufructuary lease (see subsection 2.6). This agreement would grant Landowner C the right to manage and benefit from Landowner D's land, allowing for grazing, restoration, and conservation activities.

However, if the usufructuary lease is for a fixed term exceeding 30 years, either party could terminate the lease at the 30-years mark by giving the proper notice. This could jeopardise long-term ecological gains.

Whilst less costly and bureaucratic than property law-based options, a usufructuary lease does not provide indefinite protection and does not automatically bind future owners once the term expires or if one party terminates the agreement.

If Landowner C wants to secure permanent rewilding whilst benefiting from Landowner D's

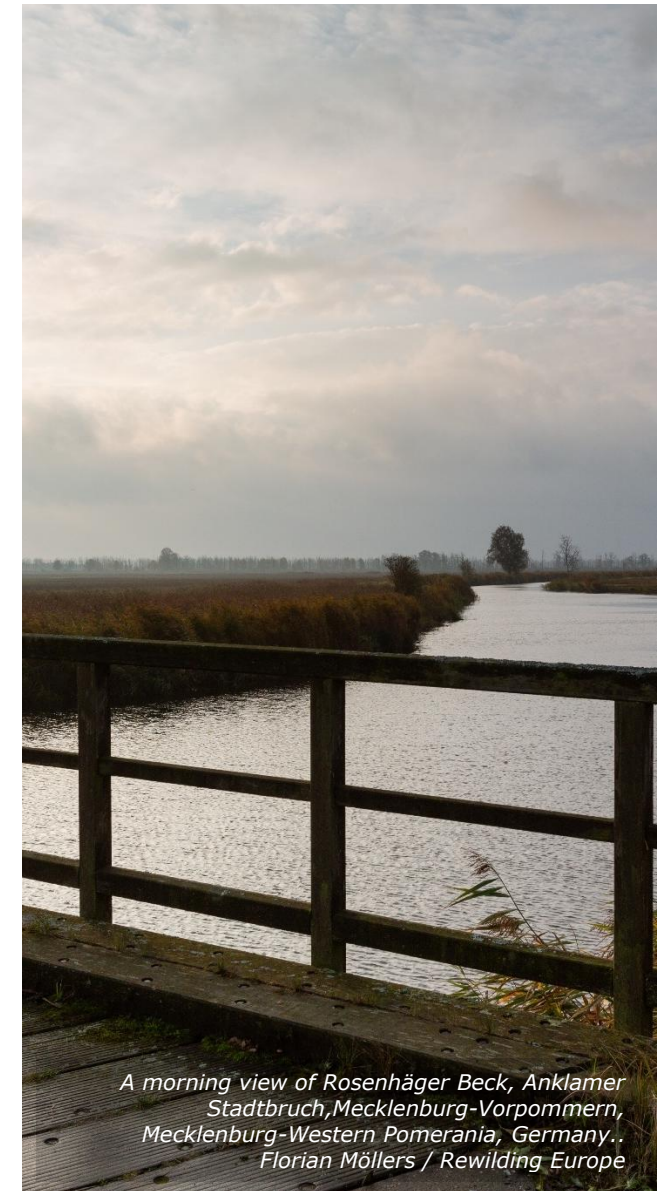
willingness to collaborate on that goal, Landowner C has the following options:

- **Usufruct rights** (subsection 2.3): a usufruct would grant Landowner C broad control over the use of Landowner D's land, including management decisions grazing, or potential eco-tourism revenue. Unlike easements, usufruct rights provide full undetermined use of the land, which allows for future rewilding activities. Future owners of Landowner D's land must respect the usufruct, and usufructs cannot be unilaterally terminated, ensuring long-term ecological gains.
- **Ground easement** (subsection 2.2): Landowner C and Landowner D can establish a ground easement, ensuring that Landowner D's land remains a permanent meadow and grazing area. The easement must specify in which ways Landowner C may use Landowner D's land (e.g. for grazing, restoration, conservation activities) and the acts that Landowner D may no longer take. Because the easement is tied to the land, not to Landowner C personally, even if either party sells their land, the easement remains in place. This solution also ensures that future owners of Landowner C's and D's land are bound by the easement, preventing agricultural conversion and securing long-term ecological continuity. This is a strong option if the goal is cross-

property habitat connectivity and permanent land-use alignment between both parcels. Another possibility would be to establish reciprocal ground easements so that, in fact, both parcels of land would be bound and dedicated to ecological purposes.

- **Restricted personal easement** (subsection 2.2): a restricted personal easement could be created in favour of Landowner C, ensuring that Landowner D's land remains a permanent meadow and grazing area. The easement must specify in which ways C may use Landowner D's land (e.g. for grazing, restoration, conservation activities) and the acts that Landowner D may no longer take. Unlike ground easements, this right is linked to Landowner C personally, so if they decide to sell their land or dies, the benefit does not pass to the new landowner or their heirs. Any new landowner who would like to continue the current arrangement would have to create a new restricted personal easement. Whilst more flexible because it does not need two properties, it is less secure for long-term rewilding because the easement on Landowner C's favour does not transfer to the new owner, potentially disrupting ecological efforts.
- **Charge on land** (subsection 2.4): a charge on land would impose positive obligations on Landowner D (and all future owners) to

maintain the land as permanent meadow. Unlike an easement, which grants specific use rights, a charge on land focuses on positive obligations, meaning it requires Landowner D to perform certain actions, such as managing the land for grazing, conducting regular restoration activities, or ensuring that the land is maintained as a permanent meadow. Future owners would be bound by these positive obligations, ensuring the land's ecological integrity is preserved. Charges on land can be less flexible than easements, as they enforce specific duties rather than allowing passive protection. All rights *in rem* options require to be registered in the Land Register for any of them to be valid and binding on third parties, including future owners. This means that Landowner D's land will be legally encumbered by the chosen right *in rem*, and any new owner of the land will be obligated to uphold the terms of the agreement. Without registration, rights *in rem* are not enforceable against new owners. In summary, the question of which mechanism comes into question depends on the desired legal content of the parties and how much Landowner D is willing to give up control and ownership. For a flexible solution, a usufructuary lease is a practical option but does not guarantee long-term protection.



A morning view of Rosenhäger Beck, Anklamer Stadtbruch, Mecklenburg-Vorpommern, Mecklenburg-Western Pomerania, Germany..
Florian Möllers / Rewilding Europe

For stronger legal security, a ground easement is one of the best options, as it binds future owners and permanently aligns land use between the two properties. The agreement must clearly specify the use for ecological purposes, such as grazing or the permanence of the rewilding effort.

If C wants total legal certainty, a combination of a ground easement and a charge on land would ensure that both properties remain part of the rewilding project permanently

2. Should/could the agreement refer to the rewilding purpose of this collaboration?

The rewilding purpose of the collaboration can, and often should be, specified in the agreement but the level of detail and binding nature of that purpose depends on the type of agreement used.

- A usufructuary lease agreement can include a provision specifying the rewilding purpose of the land. For example, the agreement could state that the land is to be maintained as a permanent meadow, designated for grazing with the aim of promoting biodiversity or other specific rewilding goals. This would be explicitly stated as part of the contractual provisions outlining the purpose of the lease. However, this purpose is only enforceable for the duration of the lease.

- Usufruct rights can be structured to align with rewilding goals (such as maintaining the land as a permanent grazing pasture) but they do not necessarily need to specify the rewilding purpose.
- A ground easement binds the land rather than the landowner and is typically used for a specific purpose, such as maintaining a permanent grazing pasture or managing land for biodiversity conservation. The ways which Landowner C may use Landowner D's land and the acts that

Landowner D can no longer take must be clearly defined in the easement agreement. The easement should also state its ecological purpose in the Land Register. This ensures that Landowner D's land will be dedicated solely to the agreed ecological purposes. Future owners of the servient land will be bound by the easement and the specified rewilding purpose.

- In turn, a restricted personal easement is linked to a specific individual or legal entity, rather than the land itself. Again, the easement must specify the ways in which Landowner C may use Landowner D's land and the acts that Landowner D may no longer take. The easement's ecological purpose should also be stated in the Land Register. Furthermore, the easement will expire if the beneficiary dies or the legal entity

dissolves, and the rewilding purpose may then no longer be enforceable.

- A charge on land does not require a specific use but may be linked to specific positive obligations related to rewilding. It is recommended that the rewilding purpose of the charge on land and how that purpose is to be achieved are clarified.

3. Are there time limits for these agreements?

How long can they remain in effect, and will they be binding on subsequent owners of either or both parcels of land? Can future owners terminate these agreements?

The duration of the agreement, its binding effect on future owners and whether it can be terminated by subsequent owners depend on the type of agreement or right in place. Below is a breakdown for each type:

Usufructuary Lease

- Time limits: a usufructuary lease can be agreed for a fixed term (e.g. for a set number of years) but cannot exceed 30 years. Once the lease reaches the 30-year mark, either party may terminate it with the required notice (typically six months). If agreed for an indefinite period, either party can terminate it at any time provided they respect standard notice periods.

- Binding on subsequent owners: generally, a usufructuary lease binds only the parties to the agreement. However, it binds heirs and new owners for the time the agreement is in place.
- Termination by future owners: future owners are bound by the terms of the lease. However, a fixed term lease could be terminated after 30 years, provided the required notice is given. If the lease has a term shorter than 30 years, it will end when the term expires, regardless of changes in ownership.

Usufruct rights

- Time limits: usufruct rights can be granted either for a specific term or indefinitely.
- Binding on subsequent owners: usufruct is binding on future owners of the servient land, regardless of changes in ownership. Once the usufruct is registered in the Land Register, it continues to be enforceable. On the beneficiary side, though, it is usually not transferable.
- Termination by future owners: future owners cannot terminate the usufruct unless the usufruct is terminated by its beneficiary, usufructuary, or for legal reasons (e.g. abandonment or expiration). A usufruct is a strong, long-term right that protects the conservation purpose for as long as it is in place.

Ground Easement

- Time limits: a ground easement can be indefinite or granted for a fixed term. Whilst the ground easement can be permanent, it is still subject to the specific terms agreed upon in the contract.
- Binding on subsequent owners: ground easements are binding on future owners of the servient land, as the right is attached to the land itself. Once the easement is registered with the Land Register, it is a public right, and future owners of the servient land must adhere to it.
- Termination by future owners: future owners of the servient land cannot unilaterally terminate the easement. The easement can be extinguished if the dominant landowner (Landowner C) requests a Deletion Approval to be registered. Termination is unlikely unless both parties agree to it.

Restricted Personal Easement

- Time limits: a restricted personal easement is typically granted for the lifetime of the beneficiary (Landowner C). If granted for a fixed period, it would last for the agreed duration.
- Binding on subsequent owners: the restricted personal easement is binding on future owners of the servient land, but, once the beneficiary (Landowner C) dies, the easement expires. Landowner C's heirs would need to agree a new restricted personal easement with Landowner D.

- Termination by future owners: future owners of the servient land are not bound by the easement after the beneficiary's death or dissolution. Therefore, the not transfer to new owners of the servient land.

Charge on Land

- Time Limits: a charge on land can be granted for a fixed term or an indefinite period.
- Binding on subsequent owners: like other rights *in rem*, a charge on land is binding on future owners of the servient land once it is registered in the Land Register. This makes the charge enforceable regardless of changes in ownership.
- Termination by future owners: future owners of the servient land can terminate the charge under specific conditions (e.g. by agreement with the dominant landowner or by the dominant landowner providing a Deletion Approval to the Land Register). Otherwise, the charge remains in place unless there is mutual agreement for its removal.

Example 4

Landowner E wants to allow a rewilding organisation to rewild their estate and to ensure that once it is rewilded, it cannot be reverted to its earlier, non-rewilded state. Landowner E wants to retain ownership of the land but wishes to ensure the land remains secure for rewilding purposes, even after their death.

The rewilding organisation proposes an agreement whereby it would have the right to manage the land in perpetuity, thereby giving control over the management of the land even if the underlying ownership changes in the future.

Could this type of arrangement work in Germany?

If so, what would its key features need to be for it to be binding e.g. would payment by the rewilding charity be required? If this type of arrangement isn't feasible, is there another way that the landowner could achieve his goals?

Such an arrangement could work in Germany through usufruct rights, charge on land, or, in some cases, a restricted personal easement. These mechanisms would allow the rewilding organisation to manage the land long-term, whilst Landowner E retains ownership. Here's how each option works in this context:

Option 1: Usufruct rights (subsection 2.3)

A usufruct grants the rewilding organisation the right to use and manage the land as they see fit, even if ownership of the land changes. This is often the strongest option for ensuring long-term protection.

Key Features:

1. Purpose: because usufruct grants full control over land use, the rewilding organisation can manage the land freely. It is possible to structure it to align with rewilding goals, but it is not required to specify the rewilding purpose in the usufruct.
2. Binding nature: once registered in the Land Register, it binds not only the landowner but also future owners.
3. Payment: the usufruct does not require payment, but the rewilding organisation may assume responsibilities for maintenance or restoration costs.
4. Duration: the usufruct would last until the beneficiary ceases, unless otherwise agreed. It can also be granted for a fixed term, but it usually cannot outlive the rewilding organisation should it cease to exist. It also ceases if an

authorised representative sends a Deletion Approval to the Land Register.

Option 2: Charge on Land (subsection 2.4)

A charge on land imposes recurring positive obligations on the landowner (and all future owners) to manage the land for rewilding purposes.

Key Features:

1. Purpose: the charge would require the land to be used for rewilding. The rewilding organisation could enforce compliance.
2. Binding nature: once registered, it binds future landowners.
3. Payment: a charge typically does not require payments, though provisions for management costs could be included.
4. Duration: a charge on land can last indefinitely or for a set period. It remains in place until is deleted by the beneficiary or by mutual consent, which offers security in ensuring rewilding purposes are upheld long-term.
5. Enforceability: if the land is mismanaged, the rewilding organisation could legally enforce compliance. Legal advice should be sought as there are technical limitations in regard to what

can be an enforcement mechanism in the context of charges on land in the rewilding context.

Option 3: Restricted Personal Easement (subsection 2.2)

A restricted personal easement would allow the rewilding organisation to manage the land for rewilding and to impose a duty on the landowner to not use the land for, e.g. agricultural purposes in the future. However, it is linked to the organisation itself, not to the land, although it would bind Landowner E, as owner of the servient land, for as long as the easement is in place to the benefit of the rewilding organisation.

Key Features:

1. Purpose: the easement would grant management rights to the rewilding organisation, ensuring land-uses align with rewilding goals.
2. Binding nature: once registered, it is binding for as long as the rewilding organisation exists.
3. Payment: no payment is typically required.
4. Duration: it is typically linked to the beneficiary's existence. If the rewilding organisation ceases to exist, the easement ends.

All three options share the registration requirement: rights *in rem* must be registered in the Land Register to ensure it is binding on future landowners.

In summary, the most robust options for ensuring long-term rewilding on the estate would be through a usufruct or charge on land, or even a combination of both, as both offer secure, enforceable rights that bind future owners. A restricted personal easement works with the limitation of being dependent of the lifetime of the rewilding organisation.

If these options are not feasible, alternative arrangements such as a long-term lease or private agreement can still help the landowner achieve their rewilding goals, but they may not offer the same level of permanence and security.

Another option is for Landowner E to donate the land to the rewilding organisation, transferring ownership and thus ensuring that it remains dedicated to rewilding purposes. This would, however, involve Landowner E relinquishing ownership



*A shallow creek lined with black alder running through a small fen, Mecklenburg-Western Pomerania, Germany.
Florian Möllers / Rewilding Europe*

	Ownership (<i>Eigentum</i>)	Ground Easement (<i>Grunddienstbarkeit</i>)	Usufruct (<i>Nießbrauch</i>)	Restricted personal easement (<i>beschränkte persönliche Dienstbarkeit</i>)	Charge on land (<i>Reallast</i>)	Lease (<i>Miete</i>)	Usufructuary lease (<i>Pacht</i>)
Relevant provisions	BGB, sec. 903	BGB, sec. 1018 et seq.	BGB, sec. 1030 et seq.	BGB, sec. 1090 et seq.	BGB, sec. 1105 et seq.	BGB, sec. 535 et seq.	BGB, sec. 581 et seq.
Scope / Content	Full rights to deal with the property and exclude others from interfering with it	Encumbrance of one property (servient property) for the benefit of another property (dominant property): - allowing the owner of the dominant property to use the servient property in certain respects, - prohibiting that certain acts may be undertaken on the servient property, or - excluding the exercise of a right towards the dominant land that arises from the ownership of the servient land	Encumbrance of a property in favour of a person allowing that person to take the emoluments of the property (i.e. fruits and the benefits that its use affords)	Encumbrance of a property in favour of a person: - allowing that person to use the property in certain respects, - prohibiting that certain acts may be undertaken on the property, or - excluding the exercise of a right towards the beneficiary that arises from the ownership of the property	Encumbrance of a property in favour of a person or another property in a way that recurring acts are to be made	Right to use the property without the enjoyment of its fruits	Right to use the property and enjoy its fruits
Entity / Parties	Natural and legal persons	Natural and legal persons	Natural and legal persons	Natural and legal persons	natural and legal persons	Natural and legal persons	Natural and legal persons

	Ownership (<i>Eigentum</i>)	Ground Easement (<i>Grunddienstbarkeit</i>)	Usufruct (<i>Nießbrauch</i>)	Restricted personal easement (<i>beschränkte persönliche Dienstbarkeit</i>)	Charge on land (<i>Reallast</i>)	Lease (<i>Miete</i>)	Usufructuary lease (<i>Pacht</i>)
Registration in Land Register	Yes	Yes	Yes	Yes	Yes	No	No
Term	Indefinite	Definite or indefinite	Definite or indefinite	Definite or indefinite	Definite or indefinite	Definite or indefinite; if a period of over 30 years is agreed on, each party may terminate the lease after 30 years	Definite or indefinite; if a period of over 30 years is agreed on, each party may terminate the usufructuary lease after 30 years
Termination Common scenarios	- transfer of title - death (natural persons) or dissolution (legal persons) of the owner - relinquishment of ownership - expropriation	- expiry of term - voluntary release - no longer benefits the dominant property - union of the dominant and the servient property - expropriation - forced sale of the servient land	- expiry of term - death or dissolution of beneficiary - voluntary release - expropriation - forced sale of the land	- expiry of term - death or dissolution of beneficiary - voluntary release - no longer of interest for the beneficiary - expropriation - forced sale of the land	- expiry of term - voluntary release - expropriation - forced sale of the servient land	- expiry of term - by notice of termination - termination for cause, e.g. if the lessee substantially violates the lessor's rights,	- expiry of term - by notice of termination - termination for cause, e.g. if the usufructuary lessee substantially violates the usufructuary lessor's rights or falls

	Ownership (<i>Eigentum</i>)	Ground Easement (<i>Grunddienstbarkeit</i>)	Usufruct (<i>Nießbrauch</i>)	Restricted personal easement (<i>beschränkte persönliche Dienstbarkeit</i>)	Charge on land (<i>Reallast</i>)	Lease (<i>Miete</i>)	Usufructuary lease (<i>Pacht</i>)
	- acquisition by prescription - good faith acquisition by a third party	- good faith acquisition by a third party without the encumbrance	- good faith acquisition by a third party without the encumbrance	- good faith acquisition by a third party without the encumbrance	- good faith acquisition by a third party without the encumbrance - redemption in return for cash payment	falls behind with two payments of the rent or if the lessee dies	behind with two payments of the rent
Payment required	May be transferred free of charge or in return for a purchase price	May be granted free of charge or in return for a fee	May be granted free of charge or in return for a fee	May be granted free of charge or in return for a fee	May be granted free of charge or in return for a fee	Yes, there must be some form of rent payable	Yes, there must be some form of rent payable
Enforceable against third parties (esp. successors of the landowner)	Yes	Yes it is binding on subsequent landowners of the servient land	Yes it is binding on subsequent owners of the land	Yes it is binding on subsequent owners of the land	Yes it is binding on subsequent landowners of the servient land	Yes it is binding on heirs of the lessor as well as anyone who acquires the land (e.g. by purchase)	Yes it is binding on heirs of the usufructuary lessor as well as anyone who acquires the land (e.g. by purchase)

	Ownership (<i>Eigentum</i>)	Ground Easement (<i>Grunddienstbarkeit</i>)	Usufruct (<i>Nießbrauch</i>)	Restricted personal easement (<i>beschränkte persönliche Dienstbarkeit</i>)	Charge on land (<i>Reallast</i>)	Lease (<i>Miete</i>)	Usufructuary lease (<i>Pacht</i>)
Transferability	Yes	It is linked to the dominant property, so it follows the ownership of the dominant property	No but: - exercise of the usufruct may be ceded to another - if the beneficiary is a legal entity, the usufruct may be transferable in certain cases, e.g. if the assets of the legal person devolve to another by way of universal succession	No but: - exercise of the restricted personal easement may be ceded to another - if the beneficiary is a legal entity, the restricted personal easement may be transferable in certain cases, e.g. if the assets of the legal person devolve to another by way of universal succession	Yes if it is in favour of a person, it may be transferred by agreement and registration in the Land Register if it is in favour of a property, it follows the ownership of that property	Yes may be transferred by agreement between all three parties (lessor, old lessee, new lessee)	Yes may be transferred by agreement between all three parties (usufructuary lessor, old usufructuary lessee, new usufructuary lessee)

3. What public law mechanisms are there to protect wild land?

This section provides an overview of public law mechanisms that can be used to secure land for rewilding. Unlike private law instruments, these mechanisms involve public entities, even though they may be negotiated between private parties.

Practitioners should contact relevant public authorities for detailed guidance on each mechanism and the procedural steps required.

3.1 Public law agreements (*öffentlich-rechtliche Verträge*)

Public authorities, including federal and municipal entities, can enter public law agreements with private landowners. These agreements may require landowners to commit to environmentally beneficial measures in exchange for public funding or other incentives.

Some federal states have "contractual nature conservation programmes" (*Vertragsnaturschutzprogramme*) targeted at the agricultural sector. These programmes often last five years or more and encourage more sustainable land management by providing financial incentives for farmers to adopt nature-friendly practices.

Such agreements may be an option for securing rewilding efforts where state supports or subsidies are available for ecological restoration.

3.2 Public building charges (*Baulasten*)

A public building charge is a public law obligation that encumbers a property, requiring the landowner to:

- Carry out specific construction measures;
- Tolerate construction measures on their property; or
- Refrain from certain forms of development or land use.

Public building charges take effect once registered in the building charge register, making them binding on all future property owners.

For rewilding, a public building charge could be used to:

- Prohibit future development on a rewilded land, ensuring the land remains in its natural state; or
- Mandate conservation actions, such as maintaining or restoring habitats as compensatory ecological measures.

3.3 Landscape protection areas and Nature conservation areas

The Federal Nature Conservation Act³⁷ (*BNatSchG*) establishes different types of protected areas, including:

- Landscape protection areas (*Landschaftsschutzgebiete*)³⁸, and
- Nature conservation areas (*Naturschutzgebiete*)³⁹.

Landscape protection areas are legally designated zones where the special protection of nature and landscape is required for one or more of the following reasons:

- Ecological balance - to conserve, develop, or enhance the ecological balance and the regenerative capacity of natural resources;
- Biodiversity protection - to safeguard habitats and species of wild fauna and flora;
- Cultural and aesthetic value - to protect landscapes of diverse, unique, or historical significance; or
- Recreational value - to preserve areas of special significance for public recreation.

Any activities that alter the character of the area or are incompatible with its conservation purpose are prohibited.

Nature conservation areas are legally designated zones requiring special protection for:

- Biodiversity conservation (to protect or restore key habitats (*biotopes*), species, and ecological communities); or
- Scientific and heritage value (to safeguard scientifically significant areas, areas of natural history, or sites of national heritage); or
- Unique ecological features (to preserve areas of exceptional rarity, natural beauty, or ecological significance).

All actions that could lead to destruction, damage, or permanent disturbance to the designated area (or its key features) are strictly prohibited. In practice, nature conservation areas often cover large areas and may include private land. If private land is included in a conservation area, landowners must comply with all protected requirements and all activities that alters the designated ecological or landscape characteristics of the area are prohibited.

Whilst the BNatSchG sets the overarching framework, most environmental protection laws are enacted at the federal state level. State governments may establish additional restrictions for nature conservation or landscape protection areas.

Landowners do not participate in the designation process, but it is recommended that practitioners approach local nature conservation authorities (*untere Naturschutzbehörde*) to get more information about the creation of areas.

3.4 Determinations in zoning plans

Local municipalities enact zoning plans (*Bebauungsplan*) that can designate specific areas as protection zones, meaning that the building authority cannot grant permits for development. Areas can also be reserved for ecological conservation, natural resource protection, or landscape maintenance.⁴⁰

The plan can be changed, but this usually involves input from different authorities, including nature protection bodies, whose interests are taken into consideration.

For rewilding, zoning plans can be useful because they can legally protect an area for conservation or prevent future development that would disrupt natural processes.

However, zoning plans can change due to shifting political priorities. Private law instruments might therefore be useful in ensuring that an area remains dedicated to those purposes even if the designation in the zoning plan changes.

3.5 Other contractual arrangements / Engagement with public entities

The Federal Nature Conservation Act encourages the use of contractual agreements for environmental protection where possible, rather than relying solely on regulatory restrictions.⁴¹

The legal concept of the principle of proportionality states that state action, when interfering with private rights, must be proportionate to the objective pursued. Also, according to the voluntary cooperation principle, private landowners should be encouraged to participate in conservation efforts without excessive legal constraints.

In addition, when implementing landscape-management measures, the relevant authorities should engage, where possible, associations focussed especially on promoting nature conservation and landscape management as well as recognised nature conservation associations or sponsors of nature parks.⁴²

Contractual agreements for environmental protection allow landowners to make their land available for nature restoration on a voluntary basis. The contracts are concluded with public entities or associations and may include the contribution of funds towards specific measures of environmental protection, including but not limited to those often undertaken during rewilding

Example 5

Landowner F recently acquired a property containing one of the country's remaining old-growth forests. She intends to leave the land undisturbed and wants to ensure that neither she nor any future owner, including her heirs, can alter its natural state. Her primary concern is that her descendants, who do not share her environmental values, may log the forest for timber and profit.

- 1 *Are there any public law instruments to protect the land to the extent desired by Landowner F? (e.g. could the landowner elect for the land to be designated as some sort of protected area?)*

German law does not recognise “private protected areas” (see [*Rewilding in Portugal: Obtaining Land and Legal Mechanisms to Protect Wild Land*](#)). However, landowners can advocate for such protection through various mechanisms.

One option is to petition for protected status. Landowners can lobby conservation authority through citizens' initiatives or political advocacy to have the land designated as protected area.

Landowners can also enter nature conservation agreements with public authorities to restrict land use and implement conservation measures.

For instance, the Bavarian contractual nature conservation programme The abundance of agreements in environmental law ranges from mere declarations of goodwill and promises of effort to genuine contractual obligations in the form of formal assurances, administrative acts, and contracts under public law. In addition, the fulfilment of public interests is also permissible by means of private-law contracts if these appear to be the most suitable for this purpose and there are no provisions of public law to the contrary.

2. *What are the requirements for privately owned land to be considered a protected area and what categories exist?*

Landowners cannot independently designate their land as a protected area, but they can advocate for its designation through political and legal advocacy.

At the local level, federal state laws provide mechanisms such as citizens' assemblies or petitions, which can influence local authorities' decisions regarding landscape protection areas (e.g. in Bavaria, local authorities have the power to designate landscape protection areas).

3. *Can Landowner F enter into a nature conservation agreement with an environmental agency to prohibit development or commercial exploitation of resources, ensuring permanent protection of the lands?*

Germany does not have a direct equivalent to conservation covenants as found in some other legal systems (e.g. the UK or the US). However, nature conservation agreements (*Naturschutzrechtliche Verträge*) between landowners and public authorities can impose land-use restrictions in line with conservation objectives.

Whilst these agreements may prohibit development and commercial exploitation, their main limitation is that they do not automatically bind future landowners unless supplemented by an *in rem* right registered in the Land Register.

To ensure permanent rewilding integrity, Landowner F could explore the following options:

- Establishing a nature conservation foundation (*Naturschutzstiftung*) dedicated to managing the land for conservation in perpetuity. It can be established to acquire and manage land for conservation purposes. This provides long-term protection as the foundation is legally bound to its conservation objectives as set out in its charter. Some environmental NGOs and public authorities have established such foundations. However, this option requires initial capital to establish and must comply with foundation law and governance requirements.

- Partnering with a rewilding association (*eingetragener Verein, e.V.*). If the rewilding organisation is structured as a registered non-profit association, Landowner F could transfer the management rights of the land to the organisation. This would allow the organisation to oversee the land's conservation, though it does not guarantee legal enforceability unless combined with *in rem* rights (e.g. a charge on land or a restricted personal easement).



*The Ina River Restoration, re-meandering the river flow, Germany.
Neil Aldridge / Rewilding Europe*

End Notes:

1. German Civil Code ("BGB"), sec. 903.
2. Those limitations and restrictions can be found in provisions of the BGB. The ownership right is also limited by rights of third parties (sec. 903 BGB).
3. BGB, sec. 873, 925.
4. BGB, sec. 1922.
5. BGB, sec. 900.
6. See endnote 4 above.
7. BGB, sec. 900 para. 1.
8. BGB, sec. 1018 et seq.
9. BGB, sec. 1090 et seq.
10. BGB, sec. 875 para 1 which states that a right in a plot of land can be cancelled by a declaration of the beneficiary that they surrender the right and its deletion in the Land Register. The Deletion Approval is a written and notarised declaration by the beneficiary of any registered right to the termination of such right. This can be declared unilaterally by the beneficiary. The consequence would be that with the entry of the deletion in the Land Register the beneficiary would no longer have an *in rem* right.
11. Although an unlikely scenario, this possibility refers to the case where the *in rem* right was wrongly deleted from the Land Register, but not ceased to exist, and a subsequent owner acquires the land without the encumbrance if they did not know that the Land Register was inaccurate. As a result, the easement ceases to exist.
12. BGB, sec. 242. The details are very complicated and governed by case law.
13. BGB, sec. 1030 et seq.
14. BGB, sec. 99.
15. BGB, sec. 1030 para 2.
16. BGB, sec. 1059.
17. BGB, sec. 1059 sentence 2. This is merely an obligation under the law of obligations between the beneficiary and the third person.
18. See endnote 10 above.
19. See endnote 11 above.
20. BGB, sec. 1105 et seq.
21. BGB, sec. 1105 para 1 and sec. 1111.
22. BGB, sec. 1105 para 2 and sec. 1110
23. See endnote 10 above.
24. See endnote 11 above.
25. BGB, sec. 535 et seq.
26. BGB, sec. 566.
27. BGB, sec. 1922.
28. BGB, sec. 542, para. 1 – indefinite lease period; para. 2 – definite lease period.
29. BGB, sec. 543.
30. BGB, sec. 542 para. 2, point 2.
31. BGB, sec. 544.
32. BGB, sec. 580a.
33. BGB, sec. 581 et seq.
34. However, subsequent owners are usually bound (see BGB, sec. 566).
35. BGB, sec. 584.

- 36. Note that there is room for debate whether biodiversity credits, or carbon offset really qualify as “fruit” (see BGB, sec. 99). There appears to be no literature or court decision that deals with this question specifically.
- 37. Available [here](#).
- 38. BNatSchG, sec. 26.
- 39. BNatSchG, sec. 23.
- 40. BauGB, sec. 5 para 2 no. 10
- 41. BNatSchG, sec. 3 para. 3.
- 42. BNatSchG, sec. 3 para. 4.

Contact Us

More information about rewilding and the issues addressed in this guidance note is available on [The Lifescape Project](#) and [Rewilding Europe](#) websites.

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Acknowledgements

Thank you to Rewilding Oder Delta for sharing their practical experiences of rewilding in Germany. Thank you also to *Clifford Chance Partnerschaft mit beschränkter Berufshaftung* for their legal support in producing this briefing note.

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