



# Rewilding in Germany

## Public Access and Restrictions

*A canoe on the Peene river, Anklam, Germany.  
Solvin Zankl / Rewilding Europe*

### Core topics

- Types of property and public access
- Restrictions on the discretion to grant or restrict access to land
- The right to fence private property
- Managing third-party access to private property

### Key takeaways

- 1 The extent to which public access is allowed or restricted depends on the legal classification and ownership of the land.
- 2 Whilst private property rights usually include the ability to permit or restrict access, certain legal exceptions may apply.
- 3 Private property may be fenced, provided this does not interfere with established public access rights or third-party use.
- 4 Where access is granted, landowners may set limitations, such as specific times, purposes, or user groups.

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## 1. What types of property are there and how do they affect public access?

Properties can be categorised in two ways: by ownership and by accessibility.

Properties can be owned by private legal entities, such as individuals, companies, or associations with legal capacity (rechtsfähige Vereine), or by the public sector (öffentliche Hand), which includes the Federal Government, the 16 Federal States (Bundesländer),<sup>1</sup> municipalities (Gemeinden) and public companies.

In terms of accessibility, there are private, semi-public and public areas:

- Private areas, where access is limited to the owner and specific people to whom the owner grants access, e.g. employees, visitors or guests;
- Semi-public areas, where access is generally open to the public, but subject to limitations, e.g. the payment of an entrance fee, limited opening hours, or restricted access for conservation reasons; and
- Public areas, where access is open, and the property is accessible to everyone without restrictions.

The level of access often depends on the type of ownership. In principle, owners may decide to whom they grant access to their property, but there can be certain limitations, e.g. for open landscape (understood to be larger areas outside developed zones, see subsection 2.1). It is more common for

publicly owned properties to be semi-public or public areas, often on the basis of a designation (*Widmung*) for a specific purpose (e.g. properties designated as roads or parks).

For example, land within national parks is often publicly owned and accessible under public law, as well as by virtue of its formal designation as a national park. However, certain publicly owned properties remain restricted in access, such as buildings used by public authorities or land leased to rewilding projects for exclusive use, typically enclosed grazing areas.

At the same time, privately owned properties are typically only accessible to their owners. However, they may also be open to the public or certain groups under specific conditions – for example, if the owner grants access if the property qualifies as open landscape.

Based on this, rewilded areas may be:

- Fully open to the public (e.g. open landscape);
- Open to the public with certain limitations (e.g. an open property with restricted areas or areas that are inaccessible during the breeding season); or
- Closed to the public, with access limited to the owner and specific guests (e.g. an area where animals are temporarily kept before release into the wild or an enclosed grazing area).

## 2. What are the common ways to access private property?

As a rule, it is at the owner's discretion to decide whether third parties can access the property. However, this discretion can be subject to legal restrictions in the interest of the common good,<sup>2</sup> such as environmental protection and recreational use of nature.

Consequently, there are instances where access may be permitted (to specific persons or the public) even without the owner's consent, and where the owner cannot prohibit the access. These situations are outlined below.

For further details on how properties can be obtained and secured (e.g. in favour of a rewilding project), please refer to *Rewilding in Germany: Legal Mechanisms for Obtaining Land and Legal Protection for Wild Land*.

### 2.1 Nature as recreational area and the right of access

The German Federal Nature Conservation Act (*Bundesnaturschutzgesetz, BNatSchG*, "NCA") protects not only biological diversity and performance and functionality of ecosystems but also the diversity, character, beauty, and recreational value of nature and the landscape.<sup>3</sup> Moreover, the NCA recognises the general principle that the open landscape should be accessible to everyone for recreational purposes.<sup>4</sup> As a result,

even private landowners must tolerate public access to their property. This so-called right of access (*Betretungsrecht*)<sup>5</sup> is comparable to the right to roam, as recognised in Scottish law,<sup>6</sup> though it is not as extensive.

However, the obligations of landowners are limited to tolerance. This means that no additional duties of care or protection (*Sorgfalts- oder Verkehrssicherungspflichten*) are imposed, and individuals may access the open landscape at their own risk.<sup>7</sup> Note that this does not exempt the landowner of all liability for any damage caused. For more information on liability, see *Rewilding in Germany: Third Party Liability*.

The right of access applies to the open landscape (*freie Landschaft*) as generally understood to be larger areas outside developed zones. The right of access allows the use of roads, paths, and unused land. Similarly, forests may also be accessed by the public for recreational purposes.<sup>8</sup>

The right of access can be restricted in accordance with the laws of the respective Federal States, which provide specific details on public access and its limitations for legitimate reasons.<sup>9</sup> Common causes for such limitations, as reflected in state laws, include nature conservation (e.g. minimising disturbance in protected areas), and landscape management. Practitioners should familiarise

themselves with the regulations of their own Federal State to understand how access to the land in that Federal State is regulated. In case of doubt, it is recommended that practitioners contact the competent authorities.

Public landowners are legally obliged to make properties they own or manage available for recreational use, i.e. open to the public.<sup>10</sup> This obligation applies only to properties that are naturally suited for public recreation or those that facilitate access to such recreational areas, provided that recreational use is compatible with sustainable use and the other objectives of nature conservation and landscape management, as well as the established public purpose of the property (if any). Moreover, public owners are only required to make properties available for recreation "to a reasonable extent", meaning they are not obliged to open all suitable properties but may exclude some at their discretion. Some Federal States deviate from this principle, providing additional or slightly modified obligations for public owners.

For rewilding purposes on publicly owned land, several options exist for excluding or limiting public access. One option is to use properties that are unsuitable for recreational use and thus fall outside the public landowner's obligation. Alternatively, the public landowner might consider whether public

access can reasonably be excluded, especially where recreation is possible on other properties. Lastly, public access could be restricted for nature conservation purposes, particularly if the rewilding project conflicts with public access (e.g. in the case of breeding programmes). If a publicly owned property is being considered for rewilding measures, practitioners should contact the owner (e.g. the municipality) to discuss and become familiar with any potential modifications or additional obligations arising under the relevant state laws.

## 2.2 Contractual rights of use

Landowners can grant others the right to use their land, for example, through lease agreements or other types of usage agreements. Typically, such agreements do not provide public access but instead allow the contracting party to use the property.

For instance, this would be the case where a rewilding organisation agrees with the landowner access to the property to collect soil samples for research or monitoring or where the rewilding organisation agrees with the landowner the right to use the property as grazing grounds.

A contract may extend usage rights not only to the contracting party but also to additional

beneficiaries. In the example above, the right to access the land to collect soil samples could also be granted to researchers from a partner university conducting research together with the rewilding organisation. Additionally, the agreement may stipulate that the property is either opened to the public or explicitly restricted from public access.

Usage agreements may also be concluded with multiple individuals. For example, if a landowner fences off land (such as a park) and installs a gate requiring visitors to pay an entrance fee, each visitor effectively enters a short-term usage agreement with the owner for the duration of their visit upon payment of the fee.

The group of beneficiaries must always be defined within each individual contract. Furthermore, the contract determines who has the right to claim access and, if necessary, enforce it against the landowner (i.e. whether this applies only to the contracting party or also to third-party beneficiaries). Given these complexities, practitioners should seek legal advice when negotiating or interpreting such agreements.

For further details on lease agreements, please refer to *Rewilding in Germany: Legal Mechanisms for Obtaining Land and Legal Protection for Wild Land*.

## 2.3 Easements

Another way to secure a right of use – and, by extension, a right of access – is to establish an easement (*Dienstbarkeit*) or a usufruct (*Nießbrauch*) and register these rights in the land registry (*Grundbuch*). For details on these rights *in rem*, please see *Rewilding in Germany: Legal Mechanisms for Obtaining Land and Legal Protection for Wild Land*.

These rights do not typically guarantee public access but may secure rights for specific beneficiaries, such as named beneficiaries or other landowners. Public sector entities, such as municipalities, can also be beneficiaries of restricted personal easements,<sup>11</sup> which secure a particular use of a property in the public interest. The secured right of use enables the municipality to pursue public interests, such as nature conservation, or to grant the public access as part of its duty to provide essential services (*Daseinsfürsorge*) and recreational opportunities (see subsection 2.1). In this way, an easement may indirectly ensure public access and/or access for the local community.

However, practitioners should engage with the relevant public sector body (in most cases, the municipality), as it is only the public entity itself which has a direct claim against the landowner under the easement if the right is not duly granted.

Additionally, the registration of such an easement requires the landowner's consent.

## 2.4 Statutory rights of use

Whilst the owner is usually the sole person entitled to use a property, certain rights of use are granted by law. These statutory rights generally apply to a limited number of beneficiaries but may restrict the owner's ability to limit or revoke access. Although their scope is narrow, such rights are relevant in rewilding contexts, for instance, in relation to hunting, as outlined below.

One example is the right of way of necessity (*Notwegerecht*), which is granted to a landowner whose property lacks access to public roads or who has not established a legal right of way. For more information, see *Rewilding in Germany: Obligations and Liability towards Neighbouring Landowners*.

Third parties may also have the right to enter or cross a property to carry out specific activities, such as hunting or fishing:

- Hunting rights (*Jagdrecht*) are generally linked to land ownership where the property meets the legal requirements for hunting.<sup>12</sup> However, these rights may also be transferred contractually to third parties. In some cases, smaller properties can form a communal hunting district (*gemeinschaftliche Jagdbezirke*)<sup>13</sup>, where all landowners within

the district collectively form a hunting association (*Jagdgenossenschaft*).<sup>14</sup> This association is entitled to exercise the right to hunt (*Jagdausübungsrecht*) on all properties within the district. Moreover, hunters who cannot reasonably access their designated hunting grounds via a public path may be granted a right of way of necessity for hunters (*Jägernotwegerecht*), allowing them to cross other hunting grounds.<sup>15</sup>

- Fishing rights are property-equivalent rights (*grundstücksgleiche Rechte*) that are registered in the land registry. By default, the fishing right belongs to the owner of the property containing the body of water unless independent fishing rights have been granted to third parties. Like hunting rights, fishing rights may often be transferred to third parties, entitling them to access another person's property if they cannot reasonably reach the relevant body of water via a public path, in return for appropriate compensation (*Uferbetretungsrecht*).<sup>16</sup> However, this right of access is not absolute as it does not apply, for example, to fenced properties.<sup>17</sup>
- Under German statutory law, beekeepers are entitled to follow their bees even if doing so requires entering third-party property.<sup>18</sup>



*Birdwatching in a mosaic grazing landscape, Neue Warpe peninsula, Stettiner Haff, Germany.  
Staffan Widstrand / Rewilding Europe*

### 3. Is there a right to fence a private property?

In general, landowners are free to decide how to use their property, including putting up fences to physically separate it from neighbouring land or to prevent unauthorised access.<sup>19</sup> Landowners are also generally permitted to put up signs or barriers indicating that entry is prohibited, and that unauthorised access constitutes trespassing.

However, rights of use, as outlined in section 2 above, must be respected. Depending on the right

of use in question, the beneficiary may be entitled to request the removal of, for example, a fence or sign that restricts their legal access or use. This could include requiring the installation of a gate within a larger fence to allow access. It is therefore advisable to consult with neighbours, potential beneficiaries and, where open landscapes or forests are concerned, the competent authorities before fencing off a property.

Additionally, practitioners should be mindful of any permits that may be required for erecting fences or other access restrictions. It is recommended that they familiarise themselves with the relevant building regulations in their respective Federal State.

### 4. Is it possible to allow access to private property by third parties? Can such access be limited or revoked?

A landowner can generally grant and revoke public and/or third-party access to its property. However, if the land is considered open landscape or forest area, the owner cannot revoke the public right of access unless there is a valid legal reason (section 2).

Furthermore, the owner's ability to revoke access rights is also restricted if the access has been

granted through an agreement and/or is secured *in rem* by an easement (subsections 2.2. and 2.3.). In such cases, the right of use remains in effect until the relevant agreement lapses, for example, by expiry or termination. If an easement has been registered, its deletion generally requires consent of the beneficiary, who is only obliged to provide it if the original justification for the easement (e.g. a contractual right of use) no longer exists.

Where a landowner is free to determine public and third-party access, it may also impose restrictions on areas of the property or at specific times (e.g. limiting access to daytime or restricting entry during the breeding season). Restrictions on public access may also apply to certain groups, such as horse riders or dog walkers, or specific activities, such as lighting fires.

### Example 1

*Landowner A introduces wild horses to a rewilding site and is concerned about public access during the breeding season.*

In general, private landowners who allow public access can set reasonable conditions, such as restricting access during sensitive times like the breeding season. Landowner A could consider physical measures (e.g. temporary fencing) or rely on signs to communicate the restriction.

However, before limiting access, it is important to consider any existing access rights (section 2). If the area is classified as an open landscape or forest, Landowner A should assess if access is protected under Federal State law. In such cases, restrictions may only be allowed under certain legal conditions.

In addition, Landowner A must consider whether any formal rights of access are granted through easements or agreements. In such rights exist, Landowner A may not be able to restrict access without the consent of those who hold them.

### Example 2

*Landowner B wishes to open a rewilding site to the public. The land is privately owned, and there are currently no public rights in place.*

In this case, Landowner B is free to allow public access without going through a formal legal process. Access can be limited to certain times, activities, or specific routes, and it can be withdrawn later if needed.

However, if there are any legal obligation attached to the land – such as public access rights established by law or access granted through agreements or easements – these must be respected. In such situation, Landowner B's ability to revoke or limit access may be restricted.



*A aerial view of a small channel running into the Haussee, a lake close to the village of Rothenklempenow, Vorpommern-Greifswald, Mecklenburg-Eastern-Pomerania, Germany.  
Florian Möllers / Rewilding Europe*

#### End Notes:

1. Please note that Germany consists of 16 Federal States (*Bundesländer*). Legislation takes place partly at federal and partly at state level. This general presentation is limited to federal law and contains some examples of law of Federal States. Special features of the respective Federal State should be considered before implementing a [rewilding] project.
2. Please see Article 14(2) of the Basic Law for the Federal Republic of Germany (*Grundgesetz, GG*).
3. Please see Section 1(1) of the NCA.
4. Please see Section 59(1) of the NCA.
5. According to Section 39(3) of the NCA, "anyone may carefully remove from nature and take possession of, at sites not subject to any prohibitions on access, and for their own personal needs, small amounts of wildflowers, grasses, ferns, mosses, lichens, fruits, mushrooms, herbs for tea and medicinal herbs and branches of wild plants" (so-called *Handstraußregelung*). In practice, this means that not only is there a right of access but people may also remove small parts of certain plants for their personal use. However, they must do so carefully and may not perform any detrimental acts besides the actual removal of small parts of the plant. According to the explanatory memorandum to Section 39(3) of the NCA, plants grown for agricultural, horticultural or forestry purposes are excluded, i.e. may not be removed.
6. Please see [Rewilding in Scotland: Public Access](#).
7. Please see Section 60 of the NCA.
8. Please see Section 14(1) of the Federal Forest Act (*Bundeswaldgesetz, BWaldG*).
9. As an example, please see Sections 57 et seqq. of the Law on the Protection of Nature in North Rhine-Westphalia (*Gesetz zum Schutz der Natur in Nordrhein-Westfalen, LNatSchG NRW*) and Sections 2 et seqq. of the State Forest Act of North Rhine-Westphalia (*Landesforstgesetz Nordrhein-Westfalen, LFoG NRW*). Another example is Art. 33 of the Bavarian Nature Conservation Act (*Bayerisches Naturschutzgesetz, BayNatSchG*), which states that landowners may **temporarily** restrict access to areas for reasons of nature conservation or the realisation of landscape conservation projects. According to Art. 31(1) of the same Act, the nature conservation authority may prohibit or restrict recreational use for the same reasons but not limited to *temporary* restrictions.
10. Please see Section 62 of the NCA.
11. To find out more about restricted personal easements, see Rewilding in Germany: Legal Mechanisms for Obtaining Land and Legal Protection for Wild Land.
12. Please see Section 3(1) of the German Federal Hunting Act (*Bundesjagdgesetz, BJagdG*).
13. Please see Section 8 of the German Federal Hunting Act (*Bundesjagdgesetz, BJagdG*).
14. Please see Section 9 of the German Federal Hunting Act (*Bundesjagdgesetz, BJagdG*).
15. Please see, e.g. Section 27 of the State Hunting Act in North Rhine-Westphalia (*Landesjagdgesetz Nordrhein-Westfalen, LJG NRW*).
16. Please see, e.g. Section 20(2) of the State Fishing Act in North Rhine-Westphalia (*Landesfischereigesetz Nordrhein-Westfalen, LFischG NRW*).
17. Please see, e.g. Section 16(2) of the State Fishing Act in Baden-Württemberg (*Fischereigesetz Baden-Württemberg, FischG BW*).
18. Please see Section 962 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*).
19. Please see Section 903 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*).

## 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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*This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.*