

Made Visible

Sectoral Overlays of the Zoning Plan in Austria

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Abstract

Above every zoning designation lie further layers of law. The work counts ten; only two of them are enacted in full by the municipality. This paper examines three federal layers against the statutory text — natural hazards, forest and contaminated sites — and shows that each has its own time logic that runs against zoning. The hazard zone plan is approved, not enacted as an ordinance, and allows narrower participation than the zoning plan. Forest has a memory of ten years; zoning has none. The law on contaminated sites starts from a cut-off date in 1989 and is the only one of the three that provides for a value compensation in favour of the public purse. The notation in the zoning plan (“Ersichtlichmachung”) does not show these differences: it shows an area, not the legal form and not the time behind the line.

1. Question

The zoning plan (Flächenwidmungsplan) makes other plans “visible”: hazard zones, forest, contaminated sites, protected areas. The notation depicts; it does not regulate. This paper asks what stands behind the lines made visible — which legal form, which procedure, which participation and which time logic — and whether their joint depiction in the plan suggests a uniformity that does not exist in law.

The analysis is based on the wording of the Forest Act 1975 (ForstG) as amended by BGBl I 144/2023 and the Contaminated Sites Remediation Act (ALSAG) as consolidated on 14 January 2025.

2. The ten layers

#	Layer	Legal form	with the municipality
S1	Zoning	ordinance	yes
S2	Building density	ordinance	yes
S3	Natural hazards	approved plan, not an ordinance	no
S4	Water law	statute, administrative decision	no
S5	Forest	statute, declaratory and	no

#	Layer	Legal form	with the municipality
		clearing decision	
S6	Contaminated sites	ordinance, database	no
S7	Location	no norm	—
S8	Townscape	statute, ordinance, expert opinion	partly
S9	Monument	decision, ordinance	no
S10	Paths, easements	contract, prescription, court	no

This paper covers S3, S5 and S6 — the three layers produced by the federal level that most often decide whether land can be built on.

3. S3 • The hazard zone plan: approved, not enacted

§ 11 ForstG governs the hazard zone plans of the torrent and avalanche control service. The plan shows the areas endangered by torrents and avalanches and their degree of danger, as well as the areas that require special management or must be kept free for later protective measures (para 2).

The procedure is built in a notable way:

Step	§ 11 ForstG	for comparison: zoning plan
Public display	four weeks in the municipality (para 3)	display under Land law
Comments	whoever makes credible a legitimate interest (para 4)	anyone
Review	commission of federal level, service unit, Land and municipality (paras 5–6)	municipal council
Conclusion	approval by the Federal Minister (para 7)	ordinance, promulgation
Amendment	adjustment to changed circumstances (para 9)	amending ordinance

Two findings follow.

The plan is not an act open to review under Art 139 B-VG. § 11 does not provide for enactment as an ordinance; the only ordinance-making power, in § 8 para 3, concerns the content, form and layout of forest spatial plans in general. Whoever considers a hazard zone

wrong therefore has no direct route to the Constitutional Court. The effect only arises once the zone is carried over into a challengeable act via zoning or a building procedure.

Case law and secondary legislation confirm this. The Supreme Administrative Court describes hazard zone plans as externally “particularly qualified expert opinions” that acquire normative character only through a planning statute (VwGH 27.3.1995, 91/10/0090). The hazard zone plan ordinance under the Forest Act (BGBl II 132/2021, § 2 para 1) and the hazard zone planning ordinance under the Water Act (BGBl II 145/2014, § 2 para 1) themselves call them expert opinions. Water-law hazard zone plans are noted in the water register (§ 42a para 3 WRG), not in the land register.

The Constitutional Court has defined the plan’s position towards the municipality: the hazard zone plan is part of federal forest spatial planning, does not formally bind the municipality, but may be taken into account in zoning; keeping a green-land designation in the red avalanche zone was objective (VfGH 8.6.1998, B 893/97). The layer therefore does not act by its own force, but only when the municipality includes it in its balancing — or Land law obliges it to. No decision expressly stating that the plan itself cannot be challenged has been found.

Participation is narrower than for zoning. For the zoning plan, anyone may comment, without a right to a reply. For the hazard zone plan, a legitimate interest must be made credible. The layer that can make land effectively unbuildable is thus the one with the narrower participation.

To this comes a finding from the work’s review: hazard zones are depicted in spatially relevant, i.e. settled areas. The map follows settlement, not danger.

4. S5 • Forest: a layer with memory

Definition. Under § 1a para 1 ForstG, forest is land stocked with certain woody plants where the stocking covers at least 1,000 m² and an average width of 10 m. Temporarily unstocked land remains forest (para 2), as does permanently unstocked land serving its management (para 3). Exceptions include short-rotation plantations up to 30 years, Christmas tree cultures and agroforestry land notified within ten years (para 5).

Zoning does not appear in this definition. Whether land is forest is decided by vegetation, not by the zoning plan.

Emergence. Under § 4 para 1, land becomes forest ten years after afforestation or, with natural regeneration, once canopy cover reaches five tenths. The provisions of Part IV, however, apply from the moment vegetation is present. A plot can therefore be bound by forest law before it is forest within the meaning of the Act.

Memory. If land was forest in the preceding ten years, the authority must declare by decision in a declaratory procedure that it is forest (§ 5 para 2), unless clearing was authorised or notified. Forest status does not end with the vegetation. The ten years are counted back from the application or from the opening of ex officio proceedings (VwGH 11.12.2009, 2008/10/0111).

Zoning changes nothing. According to settled case law of the Supreme Administrative Court, designating a forest plot as building land does not remove its forest status (VwGH 2.10.2007, 2006/10/0175); what counts are the conditions under § 1a ForstG, not the zoning (VwGH

17.10.2005, 2003/10/0043). A plot can therefore be zoned building land and forest at the same time. It only becomes buildable with a clearing permit.

Clearing. Using forest soil for other purposes is prohibited (§ 17 para 1). Authorisation is possible where no particular public interest in preserving the forest stands against it (para 2), otherwise only where a public interest in the other use prevails (para 3). The Act names, among others, **settlement** as such an interest (para 4).

	Zoning	Forest
arises through	ordinance	vegetation
memory after lapse	none — nothing revives after repeal	ten years — declaration as forest
binding before formal emergence	no	yes, from vegetation
relation to each other	—	settlement interest can justify clearing

Finding. Forest and zoning are built in opposite directions in time. Zoning arises through an act and disappears without trace; forest arises through growth and remembers. At the same time, the balancing is not neutral: the public interest in settlement that can support clearing arises largely through zoning itself. The municipality that designates building land creates the interest that can overcome the federal layer.

Access. Anyone may enter forest for recreation (§ 33 para 1). Exceptions include new forests until the vegetation reaches three metres (para 2). Camping at night, tenting, driving and riding require the forest owner's consent (para 3). The right of access is a statutory right of the public over another's property — one of the few places where land law gives the public something directly.

5. S6 • Contaminated sites: a layer with a cut-off date

Definition. The ALSAG distinguishes old deposits — deposits of waste made before 1 July 1989 — and old sites on which environmentally hazardous substances were handled more than marginally before that date (§ 2 nos 1 and 2). A contaminated site (Altlast) is an old deposit or old site with significant contamination or significant risk (§ 2 no 3).

The concept thus has a **cut-off date**. What was deposited after 1 July 1989 is by definition not an old deposit; it falls under other regimes. Layer S6 covers the past up to 1989, not the burden on a plot as such.

Procedure. The authority records old deposits and old sites (§ 13), the Federal Minister assesses and evaluates (§ 14) and designates contaminated sites by **ordinance**; their boundaries are shown as polygons on the digital cadastral map (§ 15 para 1). Contaminated sites are assigned one of three priority classes (§ 16).

Publicity. Under § 18 para 4, areas with expected significant contamination or significant risk, assessed areas and designated contaminated sites must be published. Mere recording under § 13 is not included according to the wording. The term “suspected area” (Verdachtsfläche) now

appears only in the transitional provisions (§ 40). This is the legal form of the register break the work describes as a negative vector of information asymmetry A5: what was once public as a suspicion is now public only once significance is expected or established.

Liability and compensation. The person who caused the contaminated site by action, toleration or omission is obliged to remediate (§ 21 para 1). Property owners must tolerate measures (§ 20) and notify planned activities on a contaminated site (§ 31). A toleration order also binds all later owners of the property (§ 20 para 2) — a binding of the acquirer that is not conveyed through the land register. If remediation by the federal level significantly increases the market value of a property, the owner must pay a **value compensation** up to the amount of federal funds spent. For this there is a “statutory preferential lien for the federal level ahead of all other liens” (§ 30 para 5). The wording provides for no entry and no note in the land register.

Finding. § 30 ALSAG is the only place in all of the land law covered by the work where a publicly caused increase in value systematically flows back to the public purse. On rezoning — the largest publicly caused jump in value — the rezoning surcharge has, since July 2025, captured around nine per cent of the gain, without earmarking and without reference to the municipality’s costs. The law on contaminated sites shows that cost-related capture is technically present in Austrian law. It has only been introduced where the federal level bears the costs itself.

In the version of the ALSAG reviewed, no provision on a notation in the land register was found. Unlike monument protection, whose listing is noted in the land register under § 2a DMSG, a contaminated site can therefore be found via the contaminated sites portal and the cadastral map, not via the land register itself. The contaminated sites portal’s guidance for property buyers does not mention the land register either; it refers to the polygons in the portal and to the site’s history of use. It also states that land outside a polygon may still be contaminated, because no subsurface data exist for many sites.

Finding. The absence of an entry is not a statement about the soil. This is the same structure the work described for hazard zones: the map shows the state of the survey, not the condition of the land. Whether there is a land register note outside the ALSAG is not addressed in any source checked. For the preferential lien under § 30 para 5 a separate question follows: a lien that ranks ahead of all others and need not appear in the land register cannot be seen there by buyers and creditors. How it operates against later acquirers is a question of property law that this paper does not answer.

6. What the notation conceals

	S3 hazard zones	S5 forest	S6 contaminated sites
Legal form	approved plan	statute and decision	ordinance
Participation	legitimate interest	party to proceedings	no general display
Time logic	adjustment on change	ten-year memory	cut-off date 1 July 1989
Challengeable under Art 139 B-VG	not directly	decision via administrative court	ordinance yes

	S3 hazard zones	S5 forest	S6 contaminated sites
Value compensation	no	no	yes, \$ 30

In the zoning plan, all three appear as a line or area of the same kind. The notation is a depiction on top of a depiction: it shows that something applies, but not in which form, since when, or how one can defend oneself against it. This is the same separation of legal act and depiction that Paper U1 described as the only nationwide common feature of the nine systems and Paper U5 as a time problem — doubled here, because the depicted layer itself does not come from the body that enacts the plan.

7. Link to the ρ/δ asymmetry

Disposition over the three layers lies with the federal level (Federal Minister, forest authority, Federal Minister under the ALSAG). The consequences are borne by owners, building applicants and municipalities. The municipality plays a double role: it takes the federal layers into its plan without disposing of them — and through zoning it creates the settlement interest that stands against the forest in the clearing balance. The asymmetry therefore runs not only between the public sector and private parties, but also between levels of the public sector.

8. Limits

The ForstG and ALSAG were reviewed; the Water Act (S4) was not checked in full text, and the hazard zone plan of the federal water engineering administration is known only from the review. Supreme Administrative Court case law on forest declaration and hazard zone plans is covered by a review report (review section 23); the Constitutional Court level is covered by one leading decision (B 893/97), not systematically. The statement on the absence of a land register notation for contaminated sites rests on the ALSAG and the portal's guidance; a check against land register practice is outstanding.

This paper names no private persons and makes no statements about individual municipalities, owners or companies.

Sources

Forest Act 1975 as amended by BGBl I 144/2023, §§ 1a, 4, 5, 8, 11, 17, 33 · GZP-VO BGBl II 132/2021 · WRG-GZPV BGBl II 145/2014 · WRG § 42a · VwGH 27.3.1995, 91/10/0090 · VfGH 8.6.1998, B 893/97 · VwGH 17.10.2005, 2003/10/0043 · VwGH 2.10.2007, 2006/10/0175 · VwGH 11.12.2009, 2008/10/0111 · Contaminated Sites Remediation Act, BGBl 299/1989 as amended by BGBl I 30/2024, consolidated 14.01.2025, §§ 2, 13–16, 18, 20, 21, 30, 31, 40 · Monument Protection Act § 2a · Water Act § 38 para 3 (from the review) · Contaminated sites portal, FAQ (altlasten.gv.at, accessed 13.10.2026) · Work “gewidmeter-boden”, review sections 14, 18, 21; Papers U1, U3, U5.