

# Mountain Bikers' personal responsibility and knowledge versus the setting of close legal limits and standards in nature and landscape

Personal responsibility and knowledge vs. setting of close legal standards, a gordian knot in the bike's wheels?



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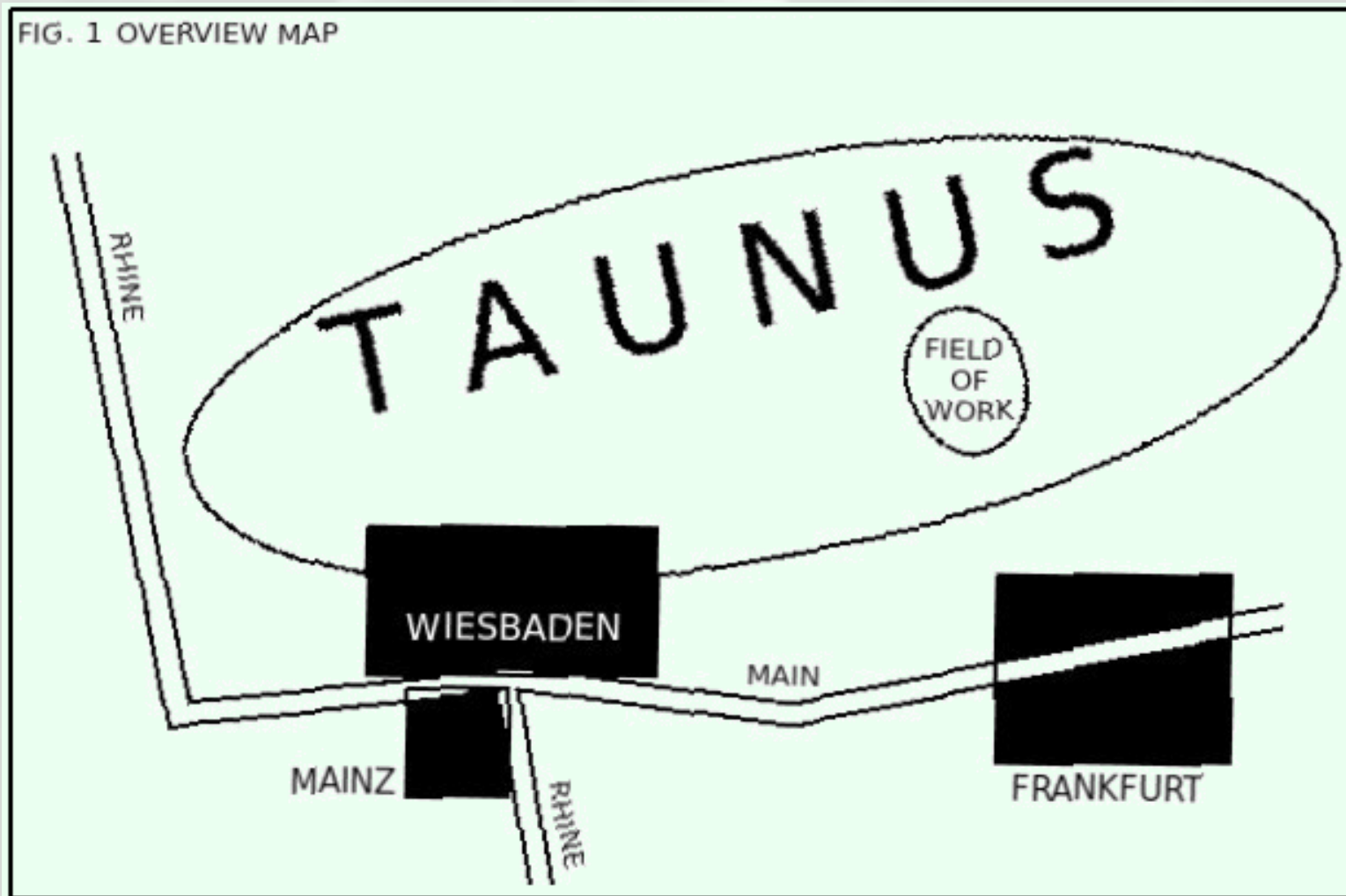
# The field of work



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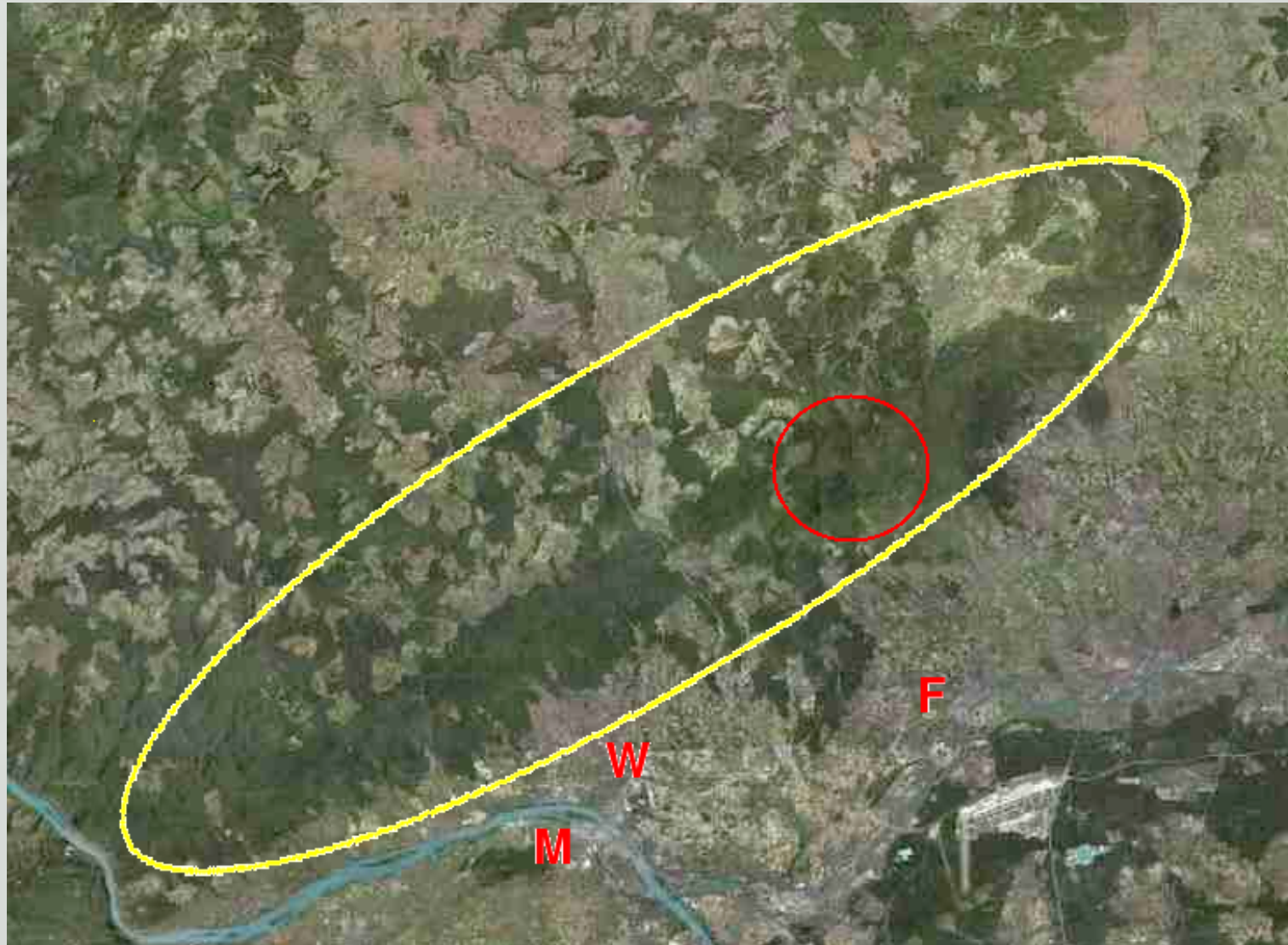
FIG. 1 OVERVIEW MAP



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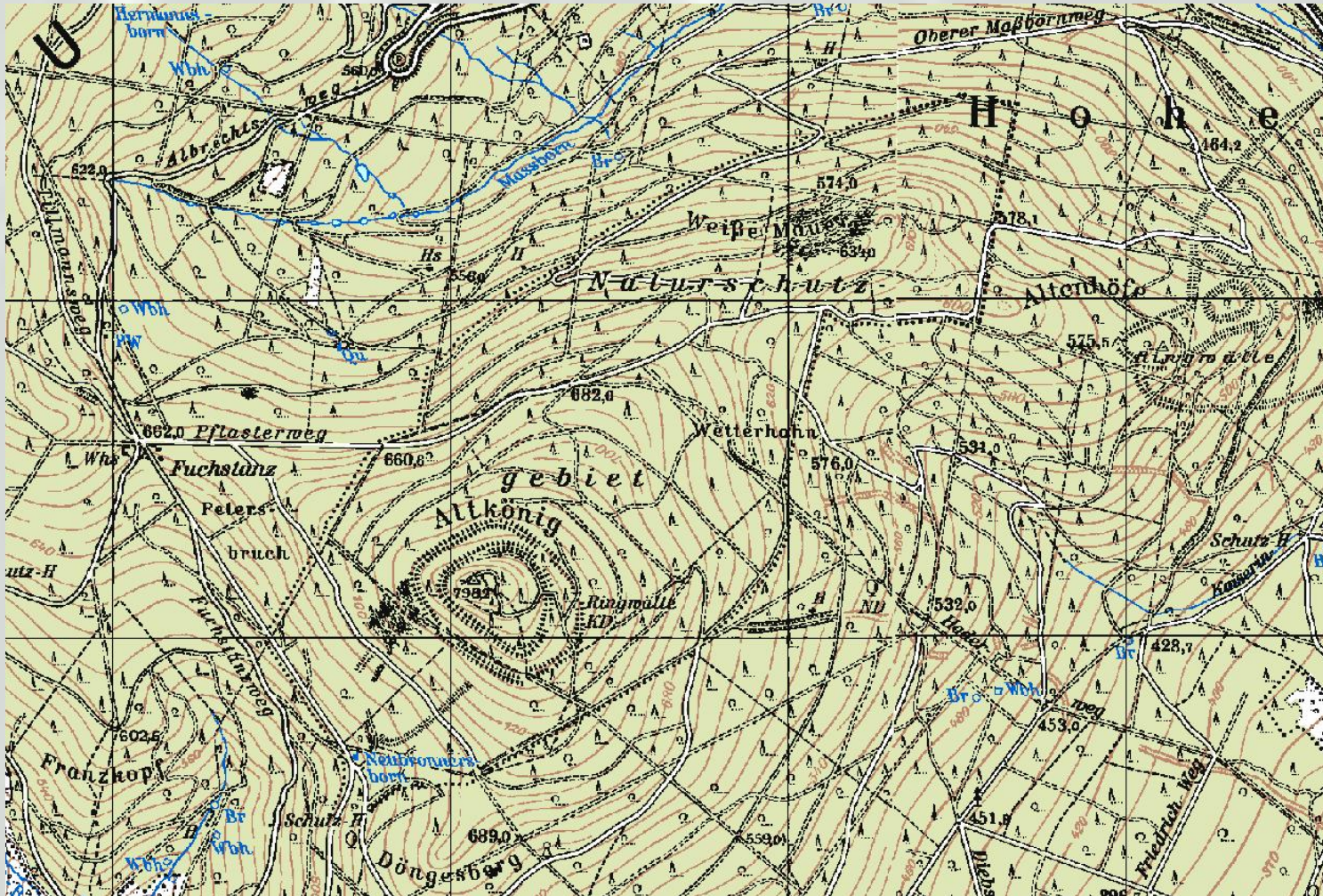


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Altkönig / Weisse Mauer: Nature conservation and Natura 2000 area (FFH), ground monument (celtic walls)



# Legal base - free landscape (GER)

- Everybody has the right, to walk on pathways and unused areas for the purpose of recreation.

§59 (1) Fed. Nature Protection Law 2009 - BNstSchG

- The states may allow other kinds of such mobility (riding, **biking**) in nature and landscape by state law.

§35 (2) s.4 BNatSchG 2009

Laws are the only legal instrument, which may be used for this legal public purpose!

Art. 14 German Constitution 1945 (no statutes etc. allowed to open private estate for the public – but no limit for private contracts)

- Nature and landscape can only be used in this way at every-one's own risk **paying attention to typical dangers.**

§60 BNatSchG 2009 (according to the recent decisions of the courts)



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# Legal base - forest (GER)

- Everybody has the right, to **ride and bike** on roads pathways and to walk and use wheelchairs (not limited to roads and pathways ) in the forest for the purpose of recreation.

§14 (1) Fed. Forest Law (actual version) - BWaldG

- The states may allow other kinds of such mobility in the forest by state law.

dto.

Laws are the only legal instrument which may be used for this legal public purpose!

Art. 14 German Constitution 1945 (no statutes etc. allowed to open private estate for the public – but no limit for private contracts)

- The forest can only be used in this way at everyone's own risk.

§14 BWaldG

# Legal base – additional limits (GER)

- The right of free access to forest, nature and free landscape can be limited by additional regulations.
- Depending on state law the limitation can be induced or performed by public by the owners of areas and public authorities.
- The limitations are allowed (depending on state law) if otherwise particularly sustainable dangers for recreation, the ecosystems, property or an economical use of property could occur.
- „Virtual limits“ may be set by the users themselves basing on knowledge about especially ecosystems and generally the needs of nature conservation and of regard to property owners and other property users including walkers and riders.



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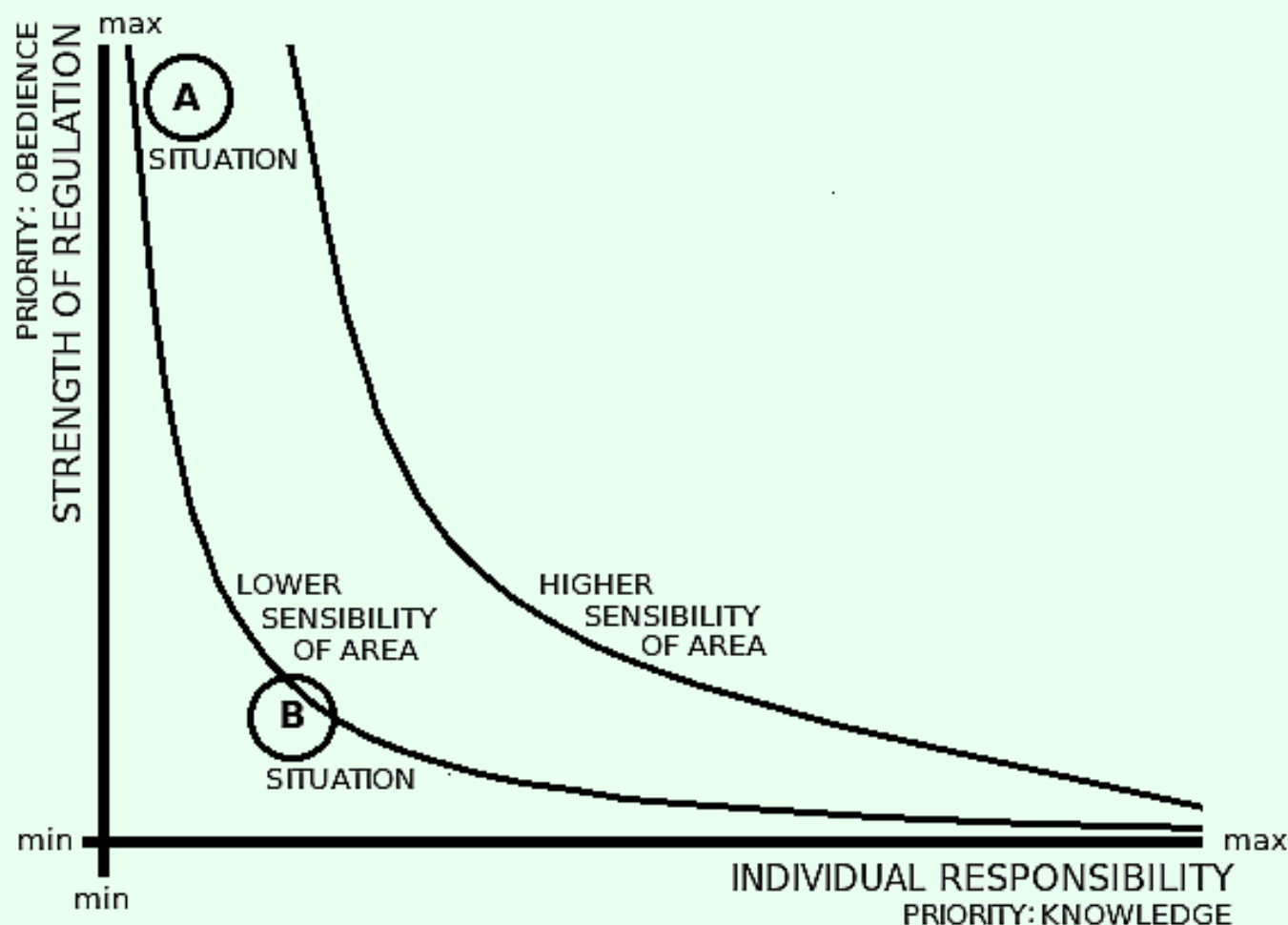
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# Legal base – additional limits

FIG.1.2 INDIFFERENCE CURVES

= f ((indiv.responsibility, strenght of regulation),(ecol. sensibility))





# "Indifference Scheme"

- Using the indifference scheme, the main goal should be, to avoid situation "A" and move situation "B" as far to the right as possible.
- The question remained open, how understandable a law or any other relevant regulation had been written, so that obedience could be replaced as much as possible by bikers' understanding.

NEVER FORGET, THAT PUBLIC AUTHORITIES (NOT ONLY THOSE FROM THE "ECOLOGICAL BRANCH") VERY OFTEN DO NOT UNDERSTAND THEIR "OWN" LAWS, THEY HAVE TO USE DAY BY DAY. THOSE AUTHORITIES WILL NOT BE ABLE, TO EXPLAIN NON-PROFESSIONALS SENSE AND CONTENT OF THE RELEVANT LAWS

# Helpful principle (Konfuzius)

- “If in government you depend upon laws, and enforce the laws by meting out punishments, you may keep the people from wrong doing, but they will lose the sense of shame for wrong doing.
- If, on the other hand, in government you depend upon virtue and maintain order by encouraging the rites, the people will have a sense of shame for wrong doing and, moreover, will emulate what is good”

*KONFUZIUS (551-479 v. Chr.), Analects II,3*



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# BACK TO BIKE – PRE-SOLUTIONS

1. A “positive solution” is preferred by the authorities, but regularly disliked by the bikers. Routes are mapped by authorities: As standard tracks, for which a bike access is legally guaranteed and as special bike trails depending from local adapted official decisions (Fig. 2 - situation "A") like “single trails”.
2. A “negative” solution by locking out only specific routes, which cross ecological sensitive areas or where the use of the routes evidently effects a disturbance of deer or other ecosystems. Every biker will be made responsible and accountable, to demonstrate knowledge as [which other routes can be detected as legally guaranteed](#) for use by bike. Developing new routes exceeding this guarantee would need the preceeding landowners' and authorities' permission. *A written guideline concerning route qualities could be helpful. This solution shows an increasing risk of offences caused by biking off admissible routes.*
3. A second alternative solution - free of additional regulations - were the best solution based on a maximum of individual responsibility. It would require a high ecology awareness of bikers and consequently would set high standards for an ecological functional empathy of the users. *A written guideline concerning not only route qualities, but moreover ecological items were required.*



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# CONCLUSION

A maximum potential of a mtb-pathway&trail-system according with its inseparable ecological and economical surroundings will be achieved

- not by a superficial deal, but
- transfer of pre-solution “1” from a formal to a material (mutual developed) understandable base
- by mutual understanding the benchmarks of a possible best entropy of the system and also
- by the mutual understanding of its limits
- by a maximum of individual responsibility.

The results of a superficial deal would not necessarily include material arguments for bikers and public authorities to fight against „black sheep“.

The yield from the use of those arguments may not be perfect but favoring formal instruments will never lead to sustainable results.



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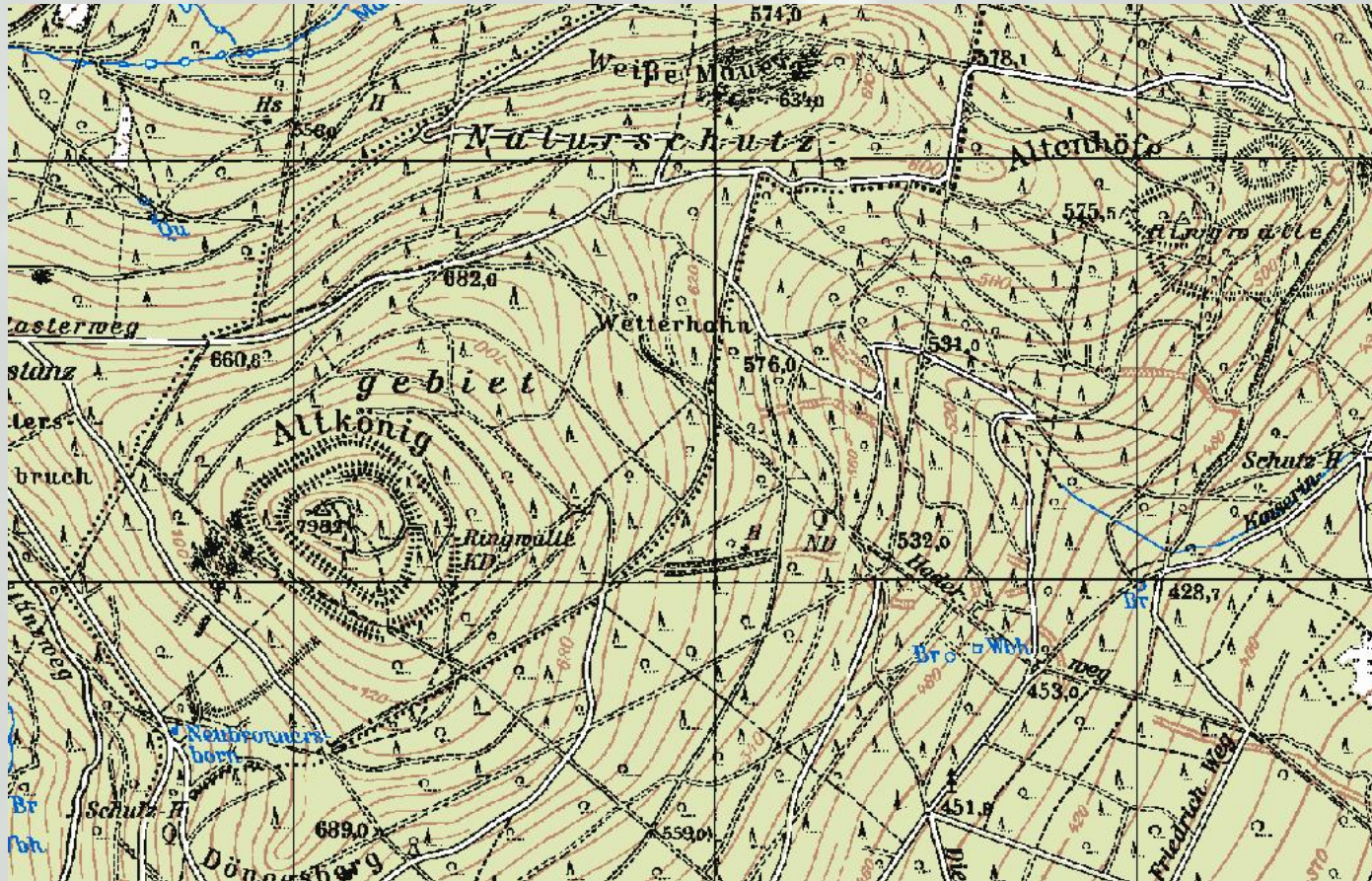


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# CRAZY FINAL

What is a road, what is a path, what is a track?



- Actual legend for a ----- pathway = "Path on which you can cycle" („Radfahrweg“)
- Future legend for a ----- pathway = "Cycle Path" („Radweg“)



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Founded on the diversity of landscape, bikers and lawyers no perfect solution will be found !