Recording audio and/or images on conserved land is governed by federal and state audio and visual recording statutes. Statutes covering audio recording, sometimes known as wiretap statutes and sometimes referred to as eavesdropping statutes, are usually separate and distinct from the statutes governing recording of visual-only material. Violation of the audio or video recording statutes may give rise to one of four standard invasion of privacy torts. The privacy torts are all state law based and most frequently arise out of common law, further developed by case law, but occasionally come from statutes. Consent is usually a defense to violations of these various state and federal laws, and often these laws are not violated if the subject of the recording or privacy violation has no reasonable expectation of privacy. Notice of the presence of the recording devices can both create implied consent and may negate an otherwise reasonable expectation of privacy. While the privacy torts are civil actions, the recording statutes may allow for both civil and criminal actions. Depending on the state, violations can be classified as either felonies or misdemeanors and can carry both monetary fines (generally in the range of $1,000 to $5,000) as well as possible prison terms (generally ranging between 6 months and 2 years). Monetary fines can be as high as $30,000.

1. **Provide clear and prominent notice.** Notice can create implied consent and it can also negate a reasonable expectation of privacy, both of which are defenses to many possible recording and privacy violations. Additionally, placing the recording devices in the open, rather than hiding them, may put those being recorded on additional notice that may imply consent or negate a reasonable expectation of privacy.

2. **Placement of notices:** Notice of recording devices should be clear and conspicuous. Ideally such notices would be placed in areas where audio or visual recording devices are located. If there are any areas on the property where rules or notices are placed, such as a list of rules or notices at the entrance to the property or on a public map, notification of the recording device should be included there as well. Notice could also be placed at known entrances to the property, like roads or trails. If the land trust has a website, or there is a website dedicated to the property, notice should also be placed on the website.

3. **Do not provide notification that recording is for one purpose when it may be used for another.** Do not provide notification that recording will only be used for one purpose, such as for documenting animal behavior, if you intend to use the recording for other purposes, like monitoring and prosecuting trespassers. While notification will likely create implied consent, some courts have held that consent can be limited to the purpose for which it was given.

4. **Pay particular care to placement of video or imaging devices near areas of heightened expectation of privacy,** such as public restrooms, campground changing areas or secluded camping areas. Under most state laws it is still probably fine to place cameras in these areas as long as notice is provided. If cameras are placed in these areas, additional care should be taken to ensure that appropriate and conspicuous notice is provided, such as placing the notice prominently on the door to the restroom.
5. **Do not use audio recording devices if visual-only devices will suffice.** Audio recording laws tend to be separate and distinct from image-only recording devices, and they tend to be stricter. If using non-audio recording devices serves the intended purpose, it is preferable to avoid compliance with wiretap laws by not recording audio.

6. **Do not use audio recording devices in Illinois.** The Illinois eavesdropping statute is quite broad and audio recording devices should not be used in Illinois without conducting a comprehensive review of Illinois statutory and case law.

7. **Do not use recorded material for commercial gain,** such as using images of poachers or dumpers in a fundraising appeal.

8. **Limit publication.** While notification may eliminate any liability under recording statutes or privacy torts, consent and other elements of these laws are generally questions of fact. To avoid protracted and expensive legal conflicts, publicize recordings only as necessary.

9. **Check your state laws.** Any land trust seeking to use recording devices should review the laws of the state in which the recording would take place and take care to craft a recording device policy and procedure that complies with relevant state laws. Illinois, for example, prohibits recording of a conversation without consent even if the conversation is not private, and may even prohibit recording that is open and obvious.

**ADDITIONAL RESOURCES**

- *Using Recording Devices on Conserved Land Memorandum*, prepared by Goodwin Procter LLP, available at [www.rinhs.org](http://www.rinhs.org)


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