

TRAIL CAMERAS: Practical Advice to Land Conservation Practitioners for use of Trail Cameras and other Recording Devices on Conserved Land in Rhode Island

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For land conservationists, trail cameras (also called game cameras, scouting cameras, or camera traps) (and web cameras) can be effective ways to "see" what's happening on your land when you are not there. Typical uses for these automated watchers include to:

- search for and document cryptic wildlife such as bobcat
- determine deer population density
- count visitors/users
- deter illicit activity/identify people engaged in illicit activity (dumping, ATVs, poaching)

Some conservationists have been reluctant to take advantage of these cameras' potential because of uncertainty about the legality of such surveillance. This report provides guidance for minimizing potential legal pitfalls of trail camera use in typical land trust situations in Rhode Island. It does not review cameras themselves or instruct in their operation. For reviews of game cameras, including tips for their use, enter "trail camera reviews" into your favorite search engine.

Before reaching for your camera:

Though legal uncertainties about trail camera use may be minimized using the guidelines below, there are other potential drawbacks to camera use and one should give them due consideration before deciding to use a trail camera on conservation land.

- Good cameras can be expensive and they are difficult to secure in the wild.
- Though cameras are getting better all the time, their capabilities remain limited in some applications.
- **Most importantly**, if you resort overly quickly to camera surveillance, you may miss a chance to address larger, underlying problems and strengthen your organization and its position in the community. If using cameras for wildlife observation or visitor studies keeps you from spending time on the land, you may miss opportunities to meet users and create relationships or to discover things about wildlife and habitats. Using cameras to try to control illicit activities could create bad feelings between your group and abutters or user groups or between your group and your town's police, fire, and other public officials. Good relations with abutters, user groups, and local officials are good to have for many reasons and cameras will do nothing to build them where they are absent and could possibly contribute to a breakdown in existing relations if badly handled.

This advice applies to owners of the land or their partners or agents. If your group is an easement owner of the land, not the fee owner, or stewards land for the fee owner, such as a municipality, through an agreement, you should discuss your interest in trail cameras with the owner and have their written permission for a specific plan of activities before you start.

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Guidance:

In Rhode Island typical conservation uses of still or video camera recordings (without sound, *see below*) are allowed under the Privacy Act (RIGL §9-1-28.1) to the extent that they record activities taking place in plain sight in an area with little or no expectation of privacy.

Nonetheless please note the following cautions:

- Do not make audio recordings without consent of the parties, this could lead to serious criminal liability under the state wiretapping statute;
- Extra caution should be used in or around residences (abutters' houses, for instance) or other areas where there might be a heightened expectation of privacy such as restrooms, changing areas, or secluded camp grounds;
- Posting a clear, prominent notice that recording devices may be in use, while not necessary, nonetheless helps reduce the expectation of privacy;
- If a posted notice indicates that recording is taking place for a particular purpose (research, for instance) then do not use the recordings for another purpose (identifying a trespasser, for instance). (But see below regarding duty to report evidence of crimes);
- Limit use of recorded images in publications and do not use recorded images for commercial gain, including, for example, images of dumpers or poachers in a fundraising appeal. While such uses may be legal, they can be disputed, resulting in protracted and expensive legal conflicts;
- Contact appropriate law enforcement authorities **before** you begin attempting to document illegal activity. Attempts to document serious illegal activity should definitely be coordinated with legal counsel and appropriate law enforcement authorities.
- If you find you have recorded activity that is potentially illegal, you should immediately contact your legal counsel. If there is evidence of a sexual assault, murder, manslaughter, or armed robbery, the police should also be immediately notified as there are serious legal consequences for failing to report such activities.

Full text of legal opinions provided for this paper are available at www.rinhs.org.

Credits and Disclaimers:

This has been a project of the RI Natural History Survey (RINHS) with assistance from the RI Land Trust Council. RINHS is solely responsible for the contents of this paper. RINHS assists land conservation practitioners with tools and suggested practices based on our research and experience (www.rinhs.org). This document is provided with the understanding that RINHS is not engaged in rendering legal or other professional counsel. If you require legal advice or other expert assistance, seek the services of the appropriate professionals.

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