Some basic drafting rules

(a) Clarity and lack of ambiguity yield longevity. Owner's understanding and acceptance are higher; monitoring and enforcement are easier.
(b) Defined terms are valuable—review the draft easement once looking solely for terms that should be defined (in the easement or by reference to a different source); review again for defined terms that are used inconsistently with their definitions.
(c) Know the land before starting to draft; protect everything that is reasonable to protect, even if there is a specific easement purpose (like endangered species habitat). A specific species may not survive, but the land is still habitat and likely meets other tests (scenic, open space).
(d) Draft comprehensive and detailed, project-specific recitals; if the prohibitions are unusual, include recitals to support and explain the prohibitions. Take every opportunity to ensure that the reader (perhaps the judge in an enforcement action) understands what and why.
(e) If severe restrictions strip substantially all economic value from the land, include strong explanatory recitals and/or backup restrictions or other protection (e.g., if ag land is organic only, add a backup ag provision to govern if a future court finds organic requirements cannot be met).
(f) Prevent severely restricted parcels from being sold separately from less restricted parcels. Formal merger may be impractical, but easement terms may create an effective merger.
(g) Don't restrict unnecessarily, especially as to picky details, and keep in mind the fundamental purposes of the easement in drafting the restrictions.
(h) Consider a carefully drafted and carefully limited "discretionary consent" provision
(i) Consider the title on the easement document. A title that reveals the easement's permanent restrictions is better than a generic title because the title search will usually pick up the document title. Prospective purchasers may not know what "Deed of Conservation Easement" means, but adding "Limiting Owners' Uses" to the end of it is more likely to attract attention. "Permanent Use Restrictions and Deed of Conservation Easement" is also harder to ignore. New owners who do ignore the easement will be less able to elicit sympathy for their claimed ignorance.
(j) Include an express provision that the easement is held in trust to benefit the public.

Recognize the reality that change will happen

(a) Consider whether some restrictions should float over time based on changing standards and practices in agriculture, forestry, land management. If so, define the critical requirements in the easement and provide for details to change over time in conformity with a recognized source of rules (and backup for that source), coupled with land trust approval of a management plan.
(b) Consider whether requirements in the easement that look to law should float (owner may engage in home occupations as permitted under current Zoning Code §1234 (locking in current law) or under Zoning Code §4321 as it may be amended from time to time. If the referenced law does not float, attach a copy as an exhibit because it may be very hard to prove in 50 years what a particular local jurisdiction's zoning law was in 2009. Many restrictions cannot float without danger to conservation values, so use prudently.
(c) Distinguish restrictions that must be absolute from those that can be qualified such that the land trust (or other identified and qualified body) can be given power to permit exceptions.
(d) Provide for land trust discretion to amend the easement in manners consistent with its stated conservation purpose, with caveats appropriate to the particular easement and grantor.
Provide that the easement can be terminated or modified contrary to its stated purpose only with court approval with full compensation to the land trust, requiring use of that compensation to accomplish similar conservation purposes. Compensation should reflect appreciation in the value of its property rights over time (land trusts cannot agree to accept less than required by Tax Regs, but they can negotiate to get more). If a grantor objects, negotiate for the provision to govern once the grantor and heirs no longer own the land (reducing new owners' incentive to seek extinguishment).

Sample provisions to include in conservation easements as appropriate

**. Waiver of Certain Defenses.** Owner hereby waives any defense of laches, waiver, estoppel, or prescription.

**. Change over Time.** In making this grant of Easement and in acquiring this Property, the Granting Owner and subsequent Owners have considered the possibility that uses prohibited by this Easement may become more economically valuable than permitted uses and that neighboring parcels may be put to prohibited uses. All parties intend that any such changes shall not be deemed circumstances justifying amendment or termination of this Easement.

**. Change of Conditions.** The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purposes of this Easement, may become greatly more economically valuable than permitted uses, and the possibility that neighboring properties may in the future be put to uses that are not permitted hereunder, have been considered by the Grantor in granting this Easement. Grantor believes that any such changes will increase the benefit to the public of the continuation of this Easement, and both Grantor and the Land Trust intend that any changes should not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

**. Agricultural Standards and Practices.** All agricultural operations on the Property shall be in accordance with a conservation plan prepared for Owner by a qualified conservation professional approved by the Trust. This plan shall be updated periodically and any time the basic type of agricultural operation on the Property changes or ownership of the Property changes. This plan shall provide for management of the Property in a manner consistent with generally accepted "Best Management Practices," namely, the then-current scientifically-based practices recommended by the U.S. Cooperative Extension Service, U.S. Natural Resources Conservation Service, or other similar government or private natural resource conservation and management agencies then active, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. All agricultural operations shall be conducted in accordance with applicable federal, state, and local laws, regulations and requirements. The Grantor and the Trust recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in the situation of Owner may result in an evolution of Agricultural Uses of the Property, provided such uses are consistent with this Easement. [This provision can be adapted to forestry and to other situations. The penultimate sentence may be covered by other easement provisions, and the final sentence may be too vague and may be interpreted to permit more flexibility than is appropriate in all cases.]