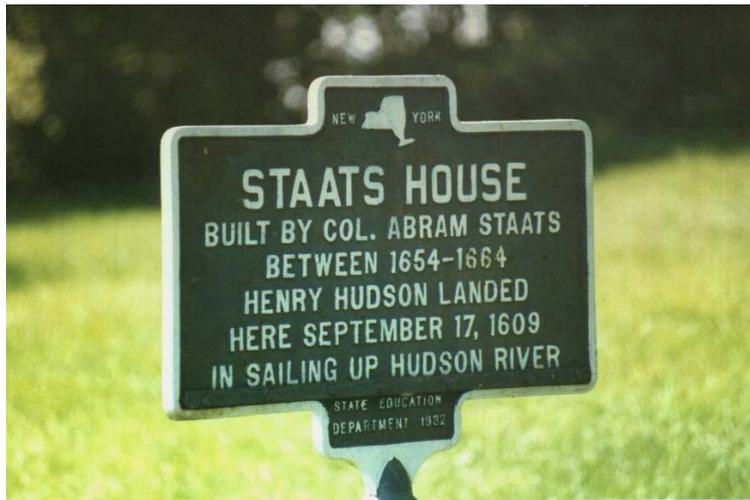


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# Staats House

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## A Donated Conservation Easement



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PLN 685/Land Conservation

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## “For Sale: Oldest house in Columbia County”



• Figure 1  
Photograph of the Staats House from appraisal document, Holden & Associates

In 1988, Dall and Ana-Marie Forsythe saw an ad in a local real estate flyer listing a historic property for sale in the town of Stockport in Columbia County, NY. They thought they would kill some time one weekend exploring the local history.<sup>1</sup> Ten years later that initial curiosity would result in the restoration and preservation of 82 acres of Hudson River front property, surrounding the home of Columbia County’s first European resident, Abraham Staats.

The area surrounding the Staats house is steeped in history. According to Captain Franklin Ellis in his book “History of Columbia County, New York” published in 1878, the first European to set foot in Columbia County was Henry

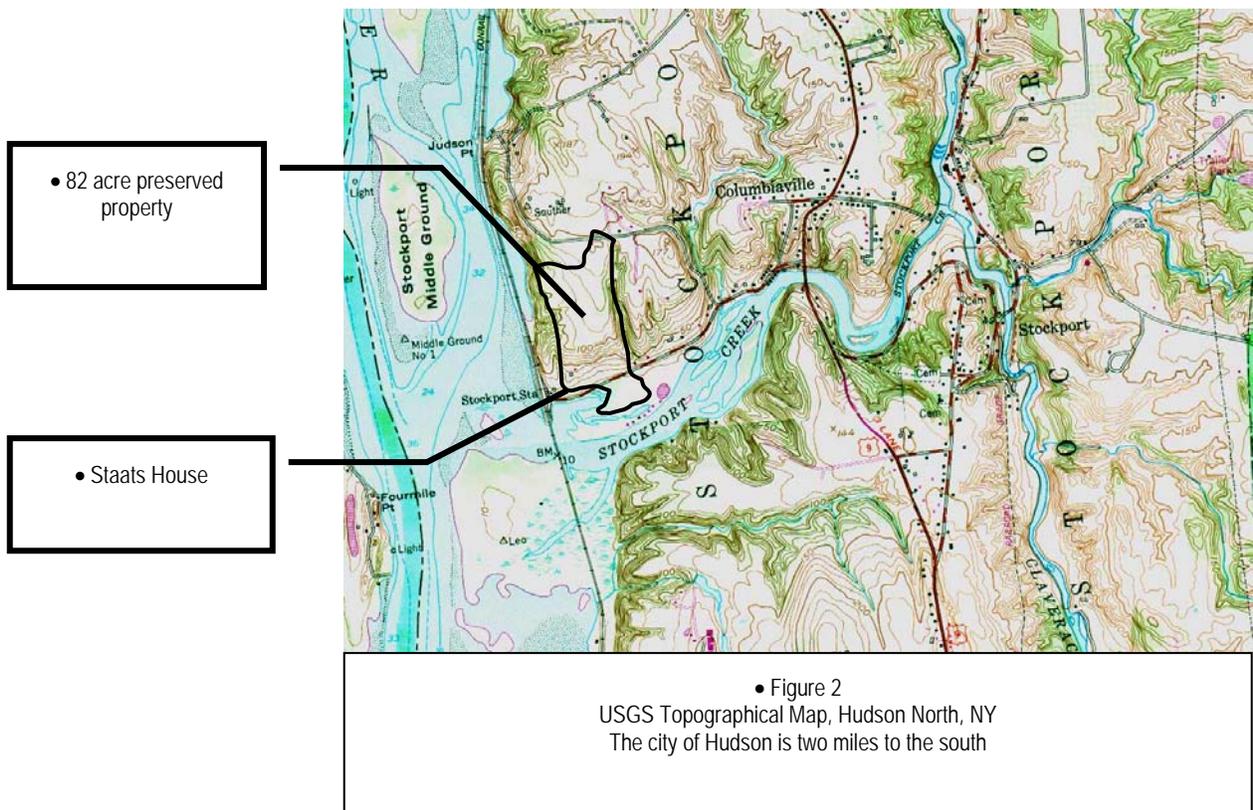
Hudson, and he did so at the mouth of Stockport Creek where the Staats house is located. Hudson spent a day visiting with the natives living in the area, and described the land as "...the finest for cultivation that I ever in my life set foot upon..."<sup>2</sup>

Abraham Staats came from Holland to New Amsterdam (New York City) in 1642, and was a surgeon at Fort Orange (Albany) in 1643. The actual date of the erection of the house has not been confirmed, but he owned the property prior to 1661. The house burned and was rebuilt in 1664.<sup>3</sup> He acquired the first English patent for 200 acres of property around the house in 1667, with 400 acres more added in 1685.

## The House's Setting

The land surrounding this house is also of great ecological importance. The shore of the Hudson River from Priming Hook in the town of Greenport to Nutten Hook in the town of Stuyvesant, including the entire shoreline of Stockport, makes up the Stockport Flats component of the Hudson River National Estuarine Research Reserve (NERR). Stockport Creek, the second largest unobstructed tributary of the Hudson River, is tidal for about one mile inland. The area is an important spawning ground for anadromous and freshwater fish. Bank swallows, belted kingfishers, and bald eagles are known to nest in the area. Migrating waterfowl, including swans, use these waters for resting and feeding. Osprey, heron, and egret also frequent the area.<sup>4</sup>

In July 1993, the New York State Department of State Division of Coastal Resources and Waterfront Revitalization designated this area part of the Columbia Greene North Scenic Area of Statewide Significance (SASS). The local road on which the house is located, Station Road, is a dead end. There is some modern style residential development along this road, but because of the large hay field on one side, and the Stockport creek and flats on the other, the house appears as if in its original, 1660's setting. The only visible intrusion is the



railroad trestle and tracks along the Hudson River about 200 yards away. In a draft report for the SASS dated June 1990, the area is described as follows:

“Without any discordant features to mar the landscape, the dominant value of

this subunit is its pristine natural character. Ephemeral effects of wildlife, river traffic, sunsets, and passing trains serve to reinforce the sense of natural tranquility embodied here.”<sup>5</sup>

When Dall and Anna-Marie Forsythe bought the property in 1988, the house and property were not in very good condition. The roof needed repairing, some of the stonework was collapsing, the inside suffered from some 1940’s style renovations, and the residing owner’s dog had the run of the house. A two-acre parcel had also been subdivided off along the local road right next to the house. Repurchase of this parcel by the seller was made a condition of the sale. There was also some back acreage divided off, but included in the sale of the property.<sup>6</sup>

## Columbia Land Conservancy

The Forsythes have spent over ten years investing time, energy, and money in refurbishing the house and property. During this time, they, as well as other residents in the area, have come to better appreciate the unique historical nature of the site. Not wanting to see this precious piece of history and landscape ruined by inappropriate development, they decided to approach the Columbia Land Conservancy (CLC) about signing a conservation easement for the property. Another concern for them was the tax burden their children might incur in the future on the inheritance of the property. They also wanted to provide for the possibility of building a new, more accessibly designed home for themselves as they grow older. In addition, they wanted to secure building lots

for their children should they decide to relocate closer to the family. At the time, Dall explained that he was "...making as much as I would ever be making as an investment banker..."<sup>7</sup> and a tax break for a donated conservation easement would help them to retain more of their earnings.

The Forsythes are members of CLC, and in December of 1994, decided to contact Mark Racicot, the executive director of the CLC for advice on how to proceed. A package of information was sent to the Forsythes, including a Sample Deed of Conservation Easement used by the CLC to adapt to each individual landowner's needs. A meeting date was set to walk the property together and evaluate each party's needs and desires. Initially, the following issues were of most concern:<sup>8</sup>

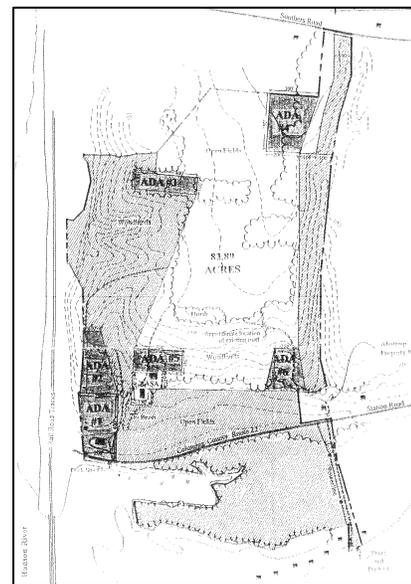
- Locations for reserved house sites for the Forsythes' children
- Preservation of the best quality wildlife habitats
- Preservation of privacy
- Preservation of the historic quality of the landscape near the existing house
- Preserving at least part of the agricultural lands on the site

Changes to the sample deed of conservation easement were begun. In the first draft, dated August 1995, a description of the property was inserted on page 1 as follows:

The property contains three distinct sections. On its southern side, the property contains a floodplain forest along the shore of the Stockport Creek. This portion of the property is an integral part of the Stockport

Flats National Estuarine Research Reserve. The area immediately to the north of the Stockport Station Road is a scenic area of fields encompassing the historic house and barns on the property. The north-central portion of the property is a higher plateau above the remainder of the property, separated from the remainder by steep wooded slopes. This high plateau is predominantly open hayfields. Steep wooded slopes are also present along a ravine at the eastern edge of the property, and at the western edge overlooking the Hudson River. <sup>9</sup>

The next step in the process was a preliminary site analysis by CLCs' landscape architect Judy Anderson. Her job was to further evaluate possible reserved sites for future houses. She developed a list of eight locations and evaluated each as to possible views, privacy, drainage, access, and septic location. I noted from her three page report that most sites would require some clearing of trees/vegetation to obtain views of the Hudson River and/or Catskill



• Figure 3

• Map from conservation easement granted by Dall and Ana-Marie Forsythe

Mountains. Many sites had drainage problems, and septic location would also be an issue should houses be built. The soils are predominantly clay based with limitations for on-site septic systems, a typical problem faced by homebuilders in the area. The locations were situated so as to provide privacy for the future homeowners, and were therefore scattered around the edges of the property.

This would necessitate the use of very long private drives for access. After a few more meetings and some negotiation, a map was developed outlining the proposed Environmental Protection Areas (EPAs) and Acceptable Development Areas (ADAs).<sup>10</sup> The EPAs are areas that would be significantly impacted by any kind of development at all, outside of the existing low level of farming/haying going on now. These areas are shown in the lightly shaded areas of the map in figure 3 on page 7. They include:

- The acreage to the south of County route 22 that is in the 100 year flood plain and surrounded by the NERR
- The hay field to the East of and adjacent to the historic house (which also contains some possible archeological locations, and is considered prime farmland by the Columbia County Soil and Water Conservation District)
- The steep ravines to either side of the site extending north of Route 22

The 6 ADAs shown in darker shading on the map are rough locations that would be acceptable for home sites. One ADA, the southwestern most (lower left), is the present location of the historic house. Another ADA, the southeastern most (lower right), is reserved for the possibility of obtaining an adjoining one-acre lot on route 22 with a house trailer on it. It can only be used if the house trailer is removed. This leaves the potential for four more homes to be built on the rest of the property. The locations of the EPAs and ADAs were agreed upon by the end of November 1995.

A process of “fine tuning” the conservation easement document began.

There were discussions regarding the following,

- The location of two existing small docks on Stockport Creek
- The inclusion or exclusion of two existing barns in one of the ADA's
- The ability to have accessory apartments in separate buildings within the ADA's
- CLC review of driveway and pond construction or other soil grading within the EPA

The ADA located behind the existing barns was modified to include the barns in an Acceptable Accessory Structure Area (AASA). This was to allow future owners to fix up the barns for living quarters, but preclude them from tearing them down if they were included in the ADA. <sup>11</sup>

In May 1996, an appraisal was done on the property to determine the impact of the conservation easement on the value of the property. The 40-page appraisal document described the economy and character of Columbia County, the Town of Stockport, and the real estate market at the time. A focus was placed on agricultural versus residential land uses in the area. The property was described in great detail as to suitability for residential development. Soils acceptable for septic systems were identified, as were steep slopes, and flood plains. 55.5 acres were determined to be developable while 27.4 were undevelopable. It was also noted that "The placement of the ADAs were not consistent with a development scenario likely to be created by a developer seeking maximal return on investment."<sup>12</sup> The zoning of the property was identified as Residential-Conservation, allowing agricultural/forestry uses of the property, or low density residential uses on three-acre or larger sized lots. The

appraisal process was complicated by the uniqueness of the subject property (historic house, large lot size, location on Hudson River). It was decided by the appraiser to separate the developable portion of the property from the existing improved portion. He then determined the values of these separate pieces, and determined the effect of the easement on the pieces separately. It was also determined that because two of the ADAs were close to the existing historic structure, placing an easement on the property would not increase the value of the existing house. This is an important point. Because this is a limited development easement, restricting development on a portion of property can sometimes actually result in an increase in value for an adjoining piece. The IRS can then refuse or reduce the tax deduction for donating the conservation easement.<sup>13</sup>

By comparing other properties in the area selling at fair market value, and others selling with deterrents to development similar to the proposed conservation easement, the value of the conservation easement could be determined. A value of \$3,900/acre was assigned to the developable portion of the property, and \$1,000/acre to the undevelopable portion. This gave a \$243,850 value to the unimproved portion of the property before the easement. After the easement, developable land would be limited to 12.7 acres, leaving 70.2 acres undevelopable. Applying the same price/acre as above, the post-easement value of the property would be \$119,730. Therefore, the value of the easement would

be \$124,000.<sup>14</sup> The Forsythes were paying 46.6% in taxes on their adjusted income, so the easement would save them around \$57,784 in taxes.<sup>15</sup>

The Forsythes' mortgage holder and attorney reviewed the Conservation Easement. Banks must subordinate their mortgage to the terms of the conservation easement, and usually will, as long as the value of the property after the easement is in place provides the bank with a satisfactory loan-to-value ratio.<sup>16</sup> The Forsythes' attorney had some concerns about liability, and asked for some changes to the document. One paragraph was changed regarding liability of the grantor for acts occurring after the grantor's ownership, but changes were refused in another paragraph dealing with a limit on CLCs' liability for acts occurring during maintenance and monitoring of the property.<sup>17</sup>

In August 1996, the final draft of the conservation easement was signed. This was not the end of the process however. A baseline data report was then developed, and a monitoring and enforcement program developed. The Forsythes gave the CLC a \$4,000 donation (also tax deductible) to cover the costs of developing the conservation easement and baseline data, and to start a fund to cover monitoring and enforcement costs.<sup>18</sup>

<b>Costs of Preparing the Forsythe Conservation Easement<sup>19</sup></b>	
Site Visits, meetings with landowners,	540
Land Planning Costs, site analysis, mapping, drafting	360
Administration, typing, document preparation	60
Travel	32
Phone, Fax, Mail	10
Recording Fees	72
Time drafting and amending editions of conservation easement, discussions with lawyers, bank, etc.	800
Baseline Data Preparation, maps and photography	100
<b>Total Cost to Prepare Easement</b>	<b>\$1,974</b>

A monitoring fund was also set up to cover the costs associated with enforcing the conservation easement. Site visits, correspondence, report writing, and photography were estimated to be \$330 per year for the existing house, 82 acres, and 4 permitted additional dwellings.

Using a formula of  $X(i) = A + X(I)$ , where

$X$  = Size of Fund       $A$  = Yearly monitoring costs

$i$  = average interest rate       $I$  = Average inflation rate

The following formula provided the amount needed to fully fund the easement-monitoring fund:<sup>20</sup>

$$X(.08) = \$330 + X(.04)$$

$$X(.08) - X(.04) = \$330$$

$$X(.04) = \$330$$

$$X = \$330 / .04$$

$$X = \$8,250$$

## Conclusion

When I first looked at the conservation easement on this property, I had a few concerns,

- Private inurement
- Too many houses allowed on the site, not really resulting in preserving enough of the property.
- Feasibility of future agricultural uses
- Preservation of the historic setting of the house

The well-written appraisal document seems to have taken care of the private inurement issue. Location of future home sites near the existing house, and the added expense of providing access to the other more remote sites do not increase the value of the property. The current zoning on the property would allow 3-acre lot sizes, for potentially 20 houses (on the land outside the floodplain). Some of the ADAs are less than one acre in size, so this is a substantial amount of property placed off limits to development. High intensity farming would probably be a problem on the property. The way the easement document is worded, even most farm buildings are limited to the ADAs. It's

possible a small scale farming operation could be established on one ADA, if most of the acreage was included with the subdivision, but this is really a rural estate easement. The location next to the Hudson River and NERR would also require some very stringent farm management practices to prevent erosion and runoff. State agencies have, in the past, enacted strict requirements for other farms on the river in this area. As far as preserving the historic setting of the house, some kind of architectural review would help. This is outside the bounds of a Land conservation organization's control. A historic district incorporated into the town's zoning ordinance would help, but knowing the local politicians and residents feeling about this kind of zoning, I don't see this happening very soon.

I think the conservation easement developed by the Forsythes and the Columbia Land Conservancy will be a great benefit to the community, as well as the two parties involved. The town is lucky to have them both as members of the community.

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## Notes

- 1 Dall and Anna-Marie Forsythe, interview by author, 7 November 1999, Stockport, NY.
- 2 Captain Franklin Ellis, *History of Columbia County, NY* (Philadelphia: Everts and Ensign, 1878), 10.
- 3 Ruth Piwonka and Roderic H. Blackburn, *A Visible Heritage, Columbia County, New York: a history in art and architecture* (Hensonville, NY: Black Dome Press, 1996), 26-7.
- 4 National Estuarine Research Reserve System, Stockport Flats Component, (Web Site, [http://inlet.geol.sc.edu/HUD/site\\_3.html#TOP](http://inlet.geol.sc.edu/HUD/site_3.html#TOP)), 7 10 1999.
- 5 New York State Department of State Division of Coastal Resources and Waterfront Revitalization, "Proposed for Designation as a Scenic Area of Statewide Significance, Stockport/Stuyvesant Scenic Area." 6 1990, 10.
- 6 Forsythe interview.
- 7 Ibid.
- 8 Mark Racicot to Dall and Anna-Marie Forsythe, 9 August 1995, file obtained from Forsythes'.
- 9 Columbia Land Conservancy. "Deed of Conservation Easement-Forsythe", 7 August 1995, draft, file obtained from Forsythes'.
- 10 Ibid.
- 11 Mark Racicot to Dall and Anna-Marie Forsythe, 14 December 1995, file obtained from Forsythes'.
- 12 Paul Schroeder, "Valuation of the Impact upon Value of a proposed conservation Easement on the Forsythe Property, Stockport, New York." (West Sand Lake, New York: Holden and Associates, 15 5 1995), 15.
- 13 Tom Daniels and Deborah Bowers, *Holding Our Ground: Protecting America's Farms and Farmland* (Washington, D.C.: Island Press, 1997), 213.
- 14 Schroeder, 32.
- 15 Forsythe interview.
- 16 Mark Racicot to Jim Angus, 22 February 1996, file obtained from Forsythes'.

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17 Carl G. Whitbeck Jr. to Mark Racicot, 1 October 1996, file obtained from Forsythes'.

18 Donna Carlucci to Dall and Anna-Marie Forsythe, 28 January 1997, file obtained from Forsythes'.

19 Mark Racicot to Dall and Anna-Marie Forsythe, 14 November 1996, file obtained from Forsythes'.

20 Ibid.

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