U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications

Via FOIAonline

June 12, 2020

Attn: Scott W. Clark
[redacted]
[redacted] (b)(6)

Re: FOIA Request No. DOC-NOAA-2018-001893

Dear Mr./Ms. Clark:

This letter responds to your Freedom of Information Act (FOIA) request entered into FOIAonline on August 6, 2018, in which you requested records as follows:

Any documents, but not limited to, records, memos, emails, and/or reports used to determine the Federal Flood Management Plan, with regards to the location in Long Island New York on Erlwein Ct. Also, know as Narraskatuck Creek. Any, but not limited to, emails, memo, permits or applications to build on the property known as 5850 Merrick Road Massapequa, NY Nassau County Section 66, Block 137, Lots 549, 551-554, which is adjacent to a tidal wetland Any studies, records, email, memos related to the how any flooding would be affected by construction on 5850 Merrick Road Massapequa, NY Nassau County Section 66, Block 137, Lots 549, 551-55, and the removal of the at minimum 15,000sq feet of natural flood mitigation. Whether the department received any notice of possible construction/change in zoning on 5850 Merrick Road Massapequa, NY Nassau County Section 66, Block 137, Lots 549, 551-55 as required by the Town of Oyster Bay Zoning ordinance that requires landowners within a 100ft radius of the property to be notified. How does NOAA classify 5850 Merrick Road Massapequa, NY Nassau County Section 66, Block 137, Lots 549, 551-55, is it considered marsh area? is that current state of the property factored into the sea level rise, and flood mitigation, and any studies that predicting the effect of developing the area and any resulting increase in flooding from the removal of 15,000 sq ft of natural flood mitigation.

Pursuant to procedures established in 15 CFR, Part 4.11(k), we rely on the following factors in determining whether the statutory standard for granting a fee waiver has been met:

1. The subject of the requested records must concern identifiable operations or activities of the Federal Government.
2. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be "likely to contribute" to and increase public understanding of those operations or activities.
3. The disclosure of the requested information must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.

4. The disclosure of the requested information is likely to contribute "significantly" to the public's understanding of Government operations or activities.
5. Whether the requester has a commercial interest that would be furthered by the requester.
6. Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, such that the disclosure is not primarily in the commercial interest of the requester.

Your fee waiver justification does not satisfy the six factors contemplated in 15 CFR 4.11. The request specifically fails to identify the segment of interested individuals that would receive the records, or your expertise in extracting, analyzing and producing any unique work that would be created following production of the records. This is not sufficient to satisfy the balancing inquiry of a fee waiver analysis. Therefore this constitutes a denial of your fee waiver request. Your request will be processed under the "Other" fee category and if applicable, a fee estimate will be sent to you. You have the right to appeal this denial of the FOIA Fee Waiver request. An appeal must be received within 90 calendar days of the date of this response letter by:

Assistant General Counsel for Employment, Litigation, and Information
U.S. Department of Commerce Room 5896
1401 Constitution Ave. NW
Washington, DC 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, or by FOIAonline, if you have an account in FOIAonline, at https://foiaonline.regulations.gov/foia/action/public/home#. The appeal should include a copy of the original request and initial denial, if any. The appeal should include a statement of the reasons why the Fee Waiver request should not be denied and why the adverse determination was in error. The appeal letter, the envelope, the e-mail subject line, should be clearly marked "Freedom of Information Act Appeal." The e-mail, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

You also may contact the NOAA FOIA Public Liaison, Robert Swisher, at (301)-628-5755.

The Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov

Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

Additionally, you may contact the NOAA FOIA Public Liaison, Robert Swisher, at (301)-628-5755.

Sincerely,

Mr. Mark Graff
NOAA FOIA Officer