



Dannel P. Malloy

GOVERNOR
STATE OF CONNECTICUT

August 30, 2018

Mr. Jeff Byard
Associate Administrator
Office of Response and Recovery
U.S. Department of Homeland Security
500 C Street
Washington, DC 20472

Through: Mr. Paul F. Ford
Acting Regional Administrator
FEMA Region 1
99 High Street, Sixth Floor
Boston, MA 02110

RE: Request for Reconsideration of Partial Denial of Request for Major Disaster Declaration, DR 4385

Dear Associate Administrator Byard:

First, I want to thank you for your support of the major disaster declaration for Public Assistance for New Haven and Fairfield Counties received as a result of the series of severe storms and tornadoes on May 15, 2018. This letter is to appeal and/or respectfully request reconsideration of two aspects of the denial of a portion of Connecticut's request for that major disaster declaration. The first is the denial of Public Assistance for the towns of Bridgewater, New Milford, and Roxbury in Litchfield County. The second is the denial of Individual Assistance for the residents of New Haven and Fairfield Counties as well as the towns of Bridgewater, New Milford, and Roxbury in Litchfield County. Because any potential Small Business Administration declaration, which could give affected homeowners and businesses access to low interest loans, is contingent on the resolution of the Individual Assistance issue, I am requesting

an expedited decision. This appeal is filed in accordance with the federal regulations under the Stafford Act, specifically 44 CFR Section 206.46.

Appeal from/Reconsideration of Denial of Public Assistance to the Towns of Bridgewater, New Milford, and Roxbury in Litchfield County

In your August 21, 2018 response to my July 9, 2018 request, you stated that “it has been determined that the damage to infrastructure in Litchfield County, including the municipalities of Bridgewater, New Milford, and Roxbury was not of such severity and magnitude to warrant the designation of Public Assistance...Therefore, your request for Public Assistance for the individual municipalities of Bridgewater, New Milford, and Roxbury is denied.”

I hereby appeal your earlier decision and ask that you reconsider your denial. Both the “localized impact” exception found in federal law (the Stafford Act and its regulations) and the “Independent Cities” exception that has been applied multiple times in the past allow you to provide the federal assistance I am requesting.

In our original request letter, we raised the issue that Connecticut does not have county government, which means that rather than the three tax bases that most states have, Connecticut residents have only two sources of non-federal governmental aid—local and state. I would like to expand on this argument, which I believe is particularly critical in a localized impact event such as this.

In the case of disasters in other states, FEMA has recognized the concept of Independent Cities, that is, cities which are within the geographical boundaries of a county, but which are not part of county government. During the snow events of 2010, for example, federal public assistance disaster aid was made available, as it has been in previous disasters, to at least 9 independent cities in Virginia, in addition to a number of counties. (See Presidential Declaration of Major Disaster, FEMA-1874-DR.) The constitutional language establishing Independent Cities in Virginia is found in Article VII of the Virginia Constitution, which provides rights for certain Virginia cities. Similarly, Article X of the Connecticut Constitution contains the concept of Home Rule for Connecticut cities and towns, rather than county government. By 1960, although counties continued to exist in Connecticut as geographical boundaries, county governmental functions, such as the right to appropriate funds or tax residents, were gone. (See, for example, Public Act 152, 1959.) Without county government, every municipality in Connecticut is, in effect, an Independent City. Virginia has been able to receive PA (and in some cases IA) benefits for many different municipalities in many different emergencies from before the 2010 snowstorm of DR 1874 up to and including the January 2016 snow storm, resulting in DR 4262, and Hurricane Matthew in November of 2016, DR 4291. Municipalities range from Alexandria, Falls Church, and Manassas to Chesapeake, Newport News, and Virginia Beach. This precedent is not an isolated occurrence, but rather is a policy that is applied consistently, and should

therefore be extended equally to municipalities in those states without county government or services.

It appears that the public assistance thresholds for the independent cities in Virginia that received federal aid are based on a per capita damages number, just as such thresholds are determined for counties under the federal Stafford Act. For example, in the data compiled by Virginia for its 2010 Enclosures B and C filed with the request that resulted in the Presidential Major Disaster Declaration (DR 1874), the per capita amounts of public assistance damage for the independent cities that received federal assistance ranged from \$4.05 per capita for Alexandria City to \$16.25 per capita for Charlottesville City. Similarly, the towns of Bridgewater, Roxbury, and New Milford in Litchfield County are contiguous to Fairfield and New Haven Counties, and suffered the same damages as their neighbors across the symbolic county line. The FEMA-certified per capita damage indicators in these three towns are \$80.34, \$11.59, and \$7.45 respectively, all well above the county indicator of \$3.68. These per capita damage indicators also support the localized impact argument. The FEMA regulations state that “we have seen localized damages in the tens and even hundreds of dollars per capita even though the statewide per capita impact was low.” 44 CFR 206.48(2). By analogy, here, the statewide per capita thresholds were met, and if the county per capita indicator was applied to these towns, it would show that they experienced per capita damages at rates of twice to more than 22 times the county per capita indicator.

The Stafford Act and the Code of Federal Regulations focus on county per capita damage estimates and county costs—it is assumed that county government will support its municipalities. But because there is no county government in Connecticut, one of the key layers of governmental assistance in other states simply does not exist in Connecticut. **Attachment 1** is a map of Connecticut showing the path of the storms and areas of damage. New Milford and Bridgewater are in the area indicated in red where the macroburst came through. As the map shows, Litchfield County’s border dips down in the area where the storm passed, literally placing the three towns in the same location as affected towns in the other two counties but excluding them from the adjacent county by the vagaries of historical mapmaking. These towns should not be excluded from receiving federal disaster assistance simply because they are on the wrong side of a county line, particularly in a state such as Connecticut, where these lines are truly just historic demarcations that no longer represent jurisdictional boundaries. According to the joint PDA, the statewide threshold of \$5.2 million has been exceeded by more than \$8 million. The swath of damage did not stop at the artificial county line.

The concentration of damages from the May 15 storms is demonstrated by the fact that Bridgewater, Roxbury, and New Milford are only three of 26 municipalities in Litchfield County, yet the FEMA-certified preliminary damage estimates for these three towns represent more than 50% of the total county indicator of \$698,000.

There is precedent for FEMA to provide this assistance in a state where there is no county government, in addition to Virginia. In DR 1994 in 2011, FEMA provided disaster assistance to two towns in Massachusetts, Southbridge and Sturbridge, under circumstances similar to the May 15 event—tornadic activity that did not respect political boundaries.

The fact that each Connecticut municipality is a political subdivision without county support is particularly critical when, as in the case of the May 15 tornado, the impact is so localized. The tornado touched down extensively in New Haven and Fairfield Counties, but, for Litchfield County, only in a small geographical area.

Appeal from/Reconsideration of Denial of Individual Assistance to Residents of Fairfield and New Haven Counties and of the Towns of Bridgewater, New Milford, and Roxbury in Litchfield County

I am also appealing and/or requesting reconsideration of FEMA's denial of Individual Assistance. As was highlighted in my July 9th letter, the number of homes meeting the FEMA definition of destroyed (25) from these May 15 storms is unprecedented in Connecticut. Although the swath of damage was relatively narrow, the path of destruction was intense: 146 additional homes received major damage by FEMA standards, and 269 homes received minor damage. In addition to damages to homes, many other items of personal property, including vehicles and boats, were destroyed. Volunteer organizations, including Team Rubicon from Maine and Connecticut, have been helping homeowners remove massive amounts of debris from roadways, driveways, and yards, but some homeowners are facing removals of 20, 30, 50, and even 100 trees from their property. In addition, in other cases, tree damage has affected septic systems or left trees hanging precariously near homes. Although these damages may not be categorized by FEMA initially as major damage, they constitute real challenges and costs to the affected homeowners.

The State of Connecticut ranks first in the nation in the percentage of land area (72%) contained within the Wildland Urban Interface (WUI). In Connecticut, this means that woodlands with heavy tree coverage and foliage intermingle very closely with populated areas. In 2008, Connecticut conducted a survey of tree density within the utility corridors (50 feet either side of road center lines) in 6 towns. Average tree density along these town roads was determined to be 47 trees per acre. The Forestry Division of the Department of Energy and Environmental Protection estimates that the pace for new tree growth to fallen trees is at a ratio of 5 to 1.

According to the FEMA Preliminary Damage Assessment, the level of uninsured eligible damaged homes in this event is about 3%. Connecticut reviewed the rate of mortgages in these communities, and determined that the number of homes without a mortgage ranged from 29% in Fairfield County to 31.2% in New Haven County. Holding a mortgage requires the homeowner

to maintain insurance, which means that about a third of the residents in these two counties are not required to maintain insurance, leaving them vulnerable to being uninsured or underinsured. A survey of the towns most affected by these storms shows that even those homeowners with insurance are facing many costs that insurance will not cover.

As described above, perhaps the largest cost to the residents of Connecticut affected by the May 15 storms is the tremendous cost of dealing with the debris. Homeowners are facing tens of thousands of dollars in tree removal, which is generally not covered by insurance. Estimates in the range of \$50,000 to \$70,000 are not uncommon. I would once again state that opening the Individual Assistance Program to homeowners to cover even the insurance deductible would provide help to people facing significant uninsured and ineligible costs.

Conclusion

In summary, I ask you to reconsider your denial of Public Assistance for the towns of Roxbury, New Milford, and Bridgewater in Litchfield County, and to grant this appeal by recognizing that these towns are in effect Independent Cities in the absence of any county government. As such, they should be able to receive the federal assistance that you have made available to their neighbors in Fairfield and New Haven Counties, and who are separated from them only by an artificial and financially insignificant invisible line. I also ask you to reconsider your denial of Individual Assistance for Fairfield and New Haven Counties and the Towns of Bridgewater, New Milford, and Roxbury in Litchfield County. Although it appears that most of the affected residents of these communities have insurance to cover the damage to their homes, for the most part, they do not have insurance to cover the costs of removing the numerous large trees that were felled by these storms. Individual assistance would help to cover any uninsured eligible costs, such as deductibles, thereby freeing up funds to pay for tree removal of the hundreds of trees that have fallen on private property. I am grateful for your consideration of this request.

Sincerely,



Dannel P. Malloy
Governor

Cc: Chief Nick Russo, FCO-1, FEMA

Attachment 1: May 15, 2018 Storms in Connecticut

