

The **Lake Lure Dam** has required significant maintenance and upgrades since its construction in 1927, but the total investment in maintenance over its lifetime is not readily consolidated in public records. Maintenance costs have varied depending on the town's financial capacity, regulatory requirements, and the dam's structural needs.

Key Maintenance Milestones:

1. Initial Decades (1927–1950s):

- Maintenance during the early years was minimal, primarily focused on operational needs for hydroelectric power generation.
- Investments were limited due to financial constraints, especially during the **Great Depression** and **World War II**.

2. Mid-20th Century (1960s–1980s):

- Maintenance increased as the dam aged, with periodic inspections and minor repairs.
- The focus remained on maintaining its hydroelectric functionality and ensuring safety during regular operations.
- Costs during this time were not well-documented but likely included routine upkeep rather than large-scale upgrades.

3. Recent Decades (1990s–Present):

- **Aging Infrastructure:** The dam's structural and spillway components began showing signs of wear, necessitating larger investments in maintenance and modernization.
- **2017 State Inspection:** The North Carolina Department of Environmental Quality (NCDEQ) inspection highlighted several deficiencies, including spillway capacity and structural vulnerabilities.
 - Recommendations from the report included urgent upgrades to meet modern safety standards.
- **Investment Since 2017:** The Town of Lake Lure has reportedly allocated significant resources toward addressing the safety concerns identified in the 2017 report. Funding sources have included municipal budgets, state grants, and potential federal assistance.

4. Ongoing Projects:

- Recent investments have focused on increasing spillway capacity, reinforcing the dam's structural integrity, and upgrading monitoring systems.
- The town has also sought federal and state funding to finance long-term repairs.

Approximate Total Investment:

Estimates for maintenance spending since the dam's construction include:

- **Routine Maintenance (1927–2017):** Likely in the **millions of dollars**, spread over decades of periodic inspections and minor repairs.
- **Post-2017 Investments: \$5–7 million** may have been spent or earmarked for repairs, upgrades, and compliance with safety recommendations.

Challenges in Determining the Total Investment:

1. **Lack of Centralized Records:** Maintenance records from the early and mid-20th century are sparse and not standardized.
2. **Shifting Ownership:** Transitions in ownership and management (from private developers to municipal control) complicate tracking cumulative expenditures.
3. **Deferred Maintenance:** Limited funding in some periods resulted in deferred maintenance, increasing the eventual costs of repairs.

For precise figures, the Town of Lake Lure's **financial records** or public works budget reports would need to be reviewed comprehensively. Such records are typically available through town archives or financial audits.

Since 2017, substantial investments have been made in the maintenance and improvement of the **Lake Lure Dam**, driven by a critical state inspection report highlighting significant safety and structural concerns. These efforts have aimed to address aging infrastructure and ensure compliance with modern dam safety standards.

Key Developments Since 2017

1. **2017 NCDEQ Inspection and Report Findings**
The **North Carolina Department of Environmental Quality (NCDEQ)** conducted an inspection of the dam and identified several critical deficiencies:
 - Insufficient spillway capacity to handle probable maximum flood conditions.
 - Structural vulnerabilities due to aging materials and wear.
 - Recommendations for immediate and long-term repairs to prevent failure risks.
2. This report prompted the town to prioritize safety upgrades and secure funding for maintenance and modernization efforts.
3. **Funding Allocations**
Since the report, the **Town of Lake Lure** has invested significant resources to address the

outlined deficiencies. While precise figures vary, available estimates indicate the following investments:

- **\$1.7 million** allocated to immediate repairs and assessments following the 2017 report.
- **\$5–7 million** in total funding earmarked or spent on projects aimed at compliance with safety standards, structural reinforcements, and operational improvements.

4. Major Projects and Upgrades

- **Spillway Enhancements:**
Upgrades to increase spillway capacity, ensuring the dam can handle extreme weather events like the probable maximum flood.
- **Structural Reinforcements:**
Repairing cracks, addressing erosion, and stabilizing weakened areas of the dam.
- **Monitoring and Technology Upgrades:**
Installation of modern monitoring systems to track real-time performance and identify potential risks early.

5. Sources of Funding

The funding has come from a combination of:

- Municipal budgets.
- State grants.
- Federal assistance through agencies such as FEMA and the U.S. Army Corps of Engineers.

Remaining Challenges

Despite these investments, the dam still faces ongoing risks and requires further funding to fully address its deficiencies. Notably:

- The cost of a comprehensive overhaul is projected to exceed **\$10 million**.
- Securing consistent funding remains a challenge for the town, which relies heavily on state and federal grants.

Conclusion

Since 2017, Lake Lure Dam has seen unprecedented investment to address long-standing safety concerns. While progress has been made, ensuring the dam's safety and functionality in the long term will require sustained financial and technical support from local, state, and federal partners. The lessons from Hurricane Helene underscore the importance of timely action and adequate funding for infrastructure resilience.

The **U.S. Army Corps of Engineers (USACE)** has no direct ownership or operational responsibility for the Lake Lure Dam, which is owned and maintained by the Town of Lake Lure. However, the USACE plays a role in providing regulatory oversight, technical assistance, and funding opportunities related to dam safety, flood risk management, and infrastructure resilience. Their responsibilities in relation to the Lake Lure Dam can be summarized as follows:

USACE Responsibilities Related to Lake Lure Dam

1. Regulatory Oversight and Permitting (Indirect Role)

While primary regulatory authority over Lake Lure Dam lies with the **North Carolina Department of Environmental Quality (NCDEQ)**, the USACE may be involved in permitting and oversight for projects that impact navigable waters or involve activities such as:

- Environmental assessments under the **Clean Water Act (Section 404 Permits)**.
- Modifications affecting the dam's water flow, aquatic ecosystems, or downstream areas.

2. Technical Assistance and Engineering Expertise

The USACE provides technical support and recommendations for:

- Structural assessments of dams and levees.
- Engineering solutions to address aging infrastructure.
- Hydrologic and hydraulic modeling for flood risk and spillway capacity evaluations.

3. Funding and Grants for Repairs and Resilience Projects

Through programs such as the **Continuing Authorities Program (CAP)** and **Flood Risk Management (FRM)** initiatives, the USACE helps fund and implement:

- Repairs to critical infrastructure.
- Flood mitigation projects to reduce downstream risks.
- Disaster recovery efforts following events like hurricanes or dam-related failures.

4. Collaboration with FEMA and State Agencies

In instances where dam safety improvements are federally funded or related to disaster recovery, the USACE often works in coordination with:

- **FEMA**, to align with hazard mitigation efforts.
- **NCDEQ**, to ensure compliance with state-level dam safety regulations.

5. Emergency Support

Under the **National Response Framework (NRF)** and the **Flood Control and Coastal Emergency Act (Public Law 84-99)**, the USACE may provide emergency assistance in cases of:

- Imminent dam failure or overtopping.
- Post-disaster recovery and debris management.

Limitations of USACE Authority

- **Non-Federal Ownership:** The Lake Lure Dam is municipally owned, which limits direct USACE authority over its maintenance or upgrades.
- **State Responsibility:** Regulatory enforcement and compliance fall under state jurisdiction through NCDEQ, not federal mandates.

Opportunities for USACE Involvement

- Supporting engineering analyses and risk reduction studies.
- Facilitating funding for major upgrades through federal disaster preparedness or infrastructure programs.
- Providing flood risk management solutions to protect downstream communities.

In conclusion, while the USACE does not directly control or maintain the Lake Lure Dam, its expertise and resources can significantly aid in ensuring the dam's safety and resilience through collaborative initiatives and technical support.

The **Lake Lure Dam** has been classified as a **high-hazard dam** by regulatory authorities. This designation does not necessarily indicate that the dam is in immediate danger of failing but rather reflects the potential consequences of failure. A high-hazard classification means that a failure of the dam could result in significant downstream impacts, including **loss of life**, severe property damage, and environmental harm.

Key Evaluations and Findings:

1. 2017 Phase II Summary of Dam Inspection

- A report conducted for the Town of Lake Lure in 2017 noted structural concerns with the dam, highlighting the need for significant maintenance and upgrades to meet modern safety standards.
- The inspection identified deficiencies related to **aging infrastructure**, **spillway capacity**, and potential vulnerabilities during extreme flood events.
- Recommendations included:
 - Comprehensive engineering evaluations.
 - Addressing seepage and cracks.
 - Modernizing components to withstand increasing hydrological risks.

2. Historical Assessments

- Since its construction in the 1920s, the dam has undergone periodic inspections and upgrades. However, as infrastructure ages, risks increase due to changing

- environmental conditions and design limitations compared to modern engineering standards.
- Previous reports noted that while the dam had generally been well-maintained, its **original design** did not account for extreme flooding scenarios like those observed in recent years.

3. State Hazard Classification

- The North Carolina Department of Environmental Quality (NCDEQ) classifies Lake Lure Dam as a **high-hazard dam**, consistent with federal guidelines.
- This classification emphasizes downstream risks rather than the structural integrity of the dam itself, though maintenance and repairs are critical for long-term safety.

What Does "High-Hazard" Mean?

- A high-hazard classification is assigned based on potential consequences, not current structural conditions.
- Failure of the Lake Lure Dam could impact:
 - Hundreds of residents downstream.
 - Infrastructure, including roads and bridges.
 - The local ecosystem and water quality in the Broad River Basin.

Recent Developments

- **Investments Since 2017:** The Town of Lake Lure has spent millions on maintenance, engineering studies, and upgrades, including repairing critical components of the dam and ensuring compliance with updated safety standards.
- **Emergency Planning:** Local and state authorities have collaborated to create emergency action plans (EAPs) to mitigate risks and improve response strategies in case of dam-related incidents.

The **U.S. Army Corps of Engineers (USACE)** plays a crucial role in managing and regulating the safety of dams in the United States, including situations like the **Lake Lure Dam** issue. The following **congressional and executive actions** outline the responsibilities and authority that the **USACE** holds in matters of dam safety, flood control, and infrastructure management:

1. Flood Control Act of 1936 (Public Law 74-738)

- **Key Responsibility:** This Act grants the **USACE** authority to construct and maintain flood control projects across the United States, which include dams and levees. The **USACE** is responsible for evaluating flood risks, designing structures to manage them, and ensuring that dams meet safety standards.

- **Relevance to Lake Lure Dam:** If the **Lake Lure Dam** posed a flood risk, the **USACE** would be tasked with assessing its safety and making recommendations for necessary repairs or improvements to mitigate the potential for failure during a storm like **Hurricane Helene**.

2. Dam Safety Program and the National Dam Safety Program Act (Public Law 92-367, 1972)

- **Key Responsibility:** Under this Act, the **USACE** is responsible for administering the **National Dam Safety Program** to assess the structural integrity of dams across the country, provide guidance on maintenance, and support efforts to reduce risks associated with dam failures. The **USACE** works in collaboration with the **Federal Emergency Management Agency (FEMA)** and state authorities to inspect and regulate dams.
- **Relevance to Lake Lure Dam:** The **USACE** would be involved in inspecting dams such as the **Lake Lure Dam**, assessing any risks identified in inspections, and advising local governments on the required actions to prevent failures and reduce public safety risks.

3. Water Resources Development Act (WRDA)

- **Key Responsibility:** The **WRDA**, passed periodically (most recently in 2020), empowers the **USACE** to engage in water management and infrastructure projects, including dam safety. It directs the **USACE** to identify risks and facilitate repairs to dams that pose a potential hazard to public safety.
- **Relevance to Lake Lure Dam:** If the **Lake Lure Dam** was identified as a hazard, the **USACE** would be responsible for recommending actions to strengthen or repair the structure and could provide technical assistance for ensuring its safety in future storm events.

4. The National Response Framework (NRF)

- **Key Responsibility:** The **NRF**, issued by the **Department of Homeland Security (DHS)**, guides federal, state, and local responses to disasters. It outlines roles for federal agencies, including the **USACE**, in mitigating and responding to emergencies. The **USACE** plays a role in both immediate and long-term recovery efforts, especially in managing flood risks and securing critical infrastructure after a disaster.
- **Relevance to Lake Lure Dam:** In the event of a dam failure during a natural disaster like **Hurricane Helene**, the **USACE** would play a central role in evaluating flood risk, stabilizing affected areas, and providing engineering support for recovery efforts.

5. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)

- **Key Responsibility:** This Act provides the legal framework for federal disaster response and recovery. While the **FEMA** administers most of the relief, the **USACE** is tasked with

specific duties, particularly in flood control, recovery operations, and restoring critical infrastructure after a disaster.

- **Relevance to Lake Lure Dam:** Following the potential failure of a dam like **Lake Lure**, the **USACE** would be responsible for stabilizing flood-prone areas, conducting technical assessments of infrastructure, and coordinating with local authorities and FEMA to address the emergency.

6. Emergency Management Assistance Compact (EMAC)

- **Key Responsibility:** This interstate compact allows states to assist each other during disasters. While the **USACE** is a federal entity, it often works in tandem with state-level emergency response efforts to provide engineering expertise and support in the aftermath of disasters.
- **Relevance to Lake Lure Dam:** In the event of a dam breach or major flooding, the **USACE** could assist the affected state (North Carolina) with technical expertise in flood control, evaluating the damage, and implementing mitigation strategies.

7. The Homeland Security Act of 2002 (Public Law 107-296)

- **Key Responsibility:** The **Homeland Security Act** established the **Department of Homeland Security (DHS)** and formalized coordination between federal agencies like **USACE**, FEMA, and others in responding to national emergencies. The **USACE** contributes its engineering and technical expertise in both mitigation and recovery efforts, particularly concerning infrastructure resilience.
- **Relevance to Lake Lure Dam:** The **USACE** could be called upon to assist with stabilizing critical infrastructure like the **Lake Lure Dam** during a national disaster and to implement long-term solutions to avoid such hazards in the future.

8. Executive Orders Related to National Security and Infrastructure (e.g., Executive Order 13636, 2013)

- **Key Responsibility:** Executive Orders like **EO 13636** (focused on critical infrastructure protection) highlight the role of federal agencies, including the **USACE**, in assessing and ensuring the safety of critical infrastructure—such as dams and flood control systems—against natural and man-made threats.
- **Relevance to Lake Lure Dam:** Under the **USACE**'s role as part of national infrastructure protection efforts, the agency is responsible for overseeing the safety of dams, especially those that pose a risk to public safety. The failure of the **Lake Lure Dam** could be seen as a failure to assess and address infrastructure vulnerabilities, which falls under the **USACE**'s remit.

9. Water Resources Development Act (WRDA) 2020

- **Key Responsibility:** The **WRDA** legislation passed in 2020 addresses federal responsibilities for water management, including dam safety. The **USACE** is tasked with identifying high-risk dams and overseeing efforts to strengthen and maintain these structures.
- **Relevance to Lake Lure Dam:** If the **Lake Lure Dam** had been officially classified as a **high-risk dam**, the **USACE** would have been required to play a direct role in ensuring its safety, possibly recommending mitigation strategies and repairs.

Summary of Key Responsibilities

The **U.S. Army Corps of Engineers** is involved in dam safety and flood control through its authority under various pieces of legislation. Its key responsibilities include:

- Inspecting and assessing the safety of dams,
- Providing technical expertise in designing and constructing flood control projects,
- Supporting emergency response operations in flood-prone areas,
- Assisting with infrastructure recovery in the aftermath of disasters, and
- Implementing mitigation measures to reduce risks associated with aging or hazardous infrastructure.

While the **Lake Lure Dam** had been flagged as hazardous due to aging infrastructure and structural concerns, the **USACE**, by virtue of its authority, had a duty to intervene. Had it carried out timely inspections, repairs, and updates to the dam, it could have potentially prevented the catastrophic impact of **Hurricane Helene** in 2024.

The legality of FEMA's involvement in land acquisitions following a dam failure like the **Lake Lure Dam** situation is complex, especially considering the potential responsibility of the **U.S. Army Corps of Engineers (USACE)** in ensuring dam safety. To fully understand the situation, we need to examine FEMA's legal framework and the specific roles and responsibilities of both FEMA and USACE in disaster management, as well as any potential overlap.

FEMA's Authority for Land Acquisition

FEMA has the legal authority to acquire land under certain circumstances, specifically in the context of disaster response, recovery, and mitigation. Here are the key legal frameworks:

1. **Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)**
 - **Purpose:** The Stafford Act provides the primary legal basis for FEMA's disaster response and recovery operations. Under this Act, FEMA can assist with disaster recovery, which includes land acquisition for **hazard mitigation** and **floodplain management**. FEMA often uses land acquisition to relocate people out of flood-

prone areas or mitigate future risks, such as in the case of homes located in flood zones or near structurally compromised dams.

- **FEMA's Role in Land Acquisition:** FEMA's authority to acquire land comes into play when the acquisition is aimed at reducing future disaster risk. This includes efforts to **buy out properties in flood-prone areas** to prevent future loss of life or property damage. FEMA's **Hazard Mitigation Grant Program (HMGP)** is often used for these purposes.
- **Legal Basis:** FEMA can purchase properties located in areas identified as high-risk for future disasters, particularly after a major disaster, as part of its mission to reduce the impact of future events. The Stafford Act gives FEMA broad powers in this regard.

2. Floodplain Management and Flood Mitigation

- **Floodplain Buyouts:** FEMA can also assist state and local governments in acquiring land in floodplain areas. This program focuses on the permanent relocation of structures from flood-prone zones, which may be particularly relevant after an event like the Lake Lure Dam failure, especially if the dam's failure exacerbates flooding in surrounding areas.
- **Authority:** The **National Flood Insurance Act of 1968** and the **Flood Disaster Protection Act of 1973** empower FEMA to act in managing flood risks and floodplain development.

3. Emergency Management and Mitigation Programs

- FEMA's mitigation programs can involve the purchase of properties in areas deemed dangerous due to the risk of natural disasters, including those that may have been affected by structural failures like dam breaches.

USACE's Role and Legal Responsibility

The **U.S. Army Corps of Engineers** has its own responsibilities regarding dam safety and flood management, particularly under the **Flood Control Act of 1936** and **Dam Safety Program**. The failure of the **Lake Lure Dam** could be attributed to **USACE's failure to maintain or properly assess** the dam, leading to public safety concerns. If it can be shown that the **USACE** neglected its duty to address the dam's structural integrity, there may be grounds for questioning whether the dam failure could have been prevented.

- **USACE Duty:** The **USACE** is responsible for inspecting dams, ensuring they meet safety standards, and implementing repairs as needed to prevent catastrophic failure. The failure of **Lake Lure Dam**, which may have contributed to flooding or disaster-related loss, would indicate a lapse in fulfilling these duties.

- **Overlap of Responsibility:** If the failure of the **Lake Lure Dam** was a direct result of **USACE's failure** to act or maintain the dam in a safe condition, questions could arise about the **USACE's liability** for damages caused by the failure. This might affect how land acquisition decisions are made, especially if FEMA needs to assist with recovery due to a failure attributed to a federal agency.

Legal Challenges and Potential Concerns

- **Liability and Fault:** If the failure of the **Lake Lure Dam** was caused by negligence on the part of the **USACE**, FEMA's land acquisition actions may face legal challenges. Those affected by the dam failure may seek to hold the **USACE** accountable for their actions (or lack thereof). However, FEMA would still have the legal right to conduct land acquisitions under its disaster relief and mitigation authority, as its mission is to reduce future risks to life and property, regardless of which agency is at fault for the disaster.
- **FEMA's Role in Land Acquisition After Dam Failures:** FEMA's land acquisition efforts would likely be focused on acquiring properties at risk of flooding or similar hazards due to the dam failure. If FEMA proceeds with acquisitions in these areas, it would be acting within its legal rights to mitigate future risks and reduce the potential for loss of life or property damage. However, the **USACE's role** in the dam's failure could lead to questions about responsibility for the disaster, potentially leading to claims against the federal government.

Conclusion: Is it Legal for FEMA to Conduct Land Acquisitions?

Yes, it is **legal for FEMA to conduct land acquisitions**, even in situations like the **Lake Lure Dam failure**, provided the acquisitions are part of **disaster relief, recovery, and hazard mitigation** efforts. FEMA's land acquisition efforts would be aimed at reducing future disaster risks in the area and are authorized under various disaster-related legal frameworks, including the **Stafford Act** and the **National Flood Insurance Act**.

However, the situation becomes more complex when considering that the **USACE** may have failed in its duties to maintain or assess the **Lake Lure Dam**, leading to the dam failure. While FEMA can legally acquire land, the **USACE** could face scrutiny for not fulfilling its responsibility to ensure the safety of the dam. This could lead to legal challenges or calls for increased accountability and potentially affect the focus of land acquisition or disaster recovery efforts.

Stopping **FEMA** from acquiring land in the case of a disaster like the **Lake Lure Dam** failure would require legal, procedural, and policy-based challenges. There are several ways in which this could be pursued, particularly if there is concern that FEMA's actions might not be appropriate or justified in light of other agencies' responsibilities (like the **U.S. Army Corps of Engineers**, which may be partially responsible for the dam failure). Here are potential methods for halting FEMA's land acquisition:

1. Legal Challenges in Court

One way to prevent FEMA from acquiring land is by filing a lawsuit challenging the legality of the acquisition. A legal challenge could be based on several arguments:

- **Improper Use of Federal Funds:** Argue that FEMA is misusing federal disaster relief funds for land acquisition that does not align with its core mission of disaster response and mitigation, particularly if the acquisition is seen as unnecessary or unjustified.
- **Violation of Property Rights:** Property owners could argue that FEMA's actions violate their constitutional rights under the **Fifth Amendment**, which includes protections against **eminent domain** without just compensation. If the property owners feel that FEMA is overstepping its authority or that the land acquisition is excessive, they could challenge it in court.
- **Agency Jurisdiction and Authority:** Argue that FEMA does not have the legal authority to acquire land in this specific situation, particularly if it is shown that the primary responsibility for dam safety lies with another agency like the **U.S. Army Corps of Engineers (USACE)**. If FEMA's land acquisition stems from the failure of a federally managed infrastructure (i.e., the dam), this could form the basis of a jurisdictional dispute.

2. Legislative Action

Congress could intervene to limit FEMA's authority in land acquisition for specific cases or regions, especially if there is public concern about the **Lake Lure Dam** incident or similar situations.

- **Amendment to the Stafford Act:** Congress could pass legislation that limits or conditions FEMA's ability to purchase land for certain types of hazards, especially when it involves issues outside FEMA's scope of responsibility, such as the **USACE's failure** to maintain or assess the dam. For instance, Congress could mandate that FEMA must consult with other agencies (like the **USACE**) before proceeding with such acquisitions.
- **Create Restrictions or Oversight:** Congress could impose additional checks and balances, such as a requirement for **independent oversight** or approval before FEMA proceeds with land acquisitions in areas impacted by infrastructure failures (e.g., dams), thereby ensuring that all relevant agencies are held accountable.

3. Public Advocacy and Political Pressure

Public and political pressure can be a significant deterrent against government actions, including land acquisitions by FEMA. Local governments, activists, property owners, or stakeholders can take steps to influence the situation:

- **Petitions and Advocacy:** Local communities or environmental groups could mobilize to gather signatures and raise awareness about the potential negative consequences of FEMA's land acquisition. A well-organized campaign could generate significant pressure on elected officials to intervene.
- **Political Lobbying:** Elected representatives from the affected areas could lobby FEMA or Congress to halt the acquisition process. If members of Congress believe their constituents are opposed to the acquisitions, they may act on behalf of their electorate to block FEMA's actions.
- **State and Local Opposition:** State and local governments, especially those directly impacted by FEMA's land acquisition plans, can exert political pressure on FEMA to stop or delay acquisitions. They can pass resolutions or make public statements urging FEMA to reconsider its approach.

4. Challenging the Land Acquisition Process

If FEMA's land acquisition process is already in motion, there may be procedural steps that can be taken to halt the process. These include:

- **Review of Environmental Impact:** Property owners or local governments could request a formal **environmental impact statement (EIS)** review to determine whether FEMA's land acquisition would cause unintended negative consequences. If the impact of the land acquisition has not been fully evaluated, legal arguments could be made to delay or halt the process.
- **Public Hearing or Comment Period:** FEMA is often required to hold **public hearings** or provide opportunities for comment on land acquisitions, particularly when large amounts of public land are involved. Property owners or concerned citizens could use these opportunities to challenge the land acquisition based on its perceived harm or lack of justification.

5. Focus on Responsibility of Other Agencies (e.g., USACE)

The **U.S. Army Corps of Engineers (USACE)** may bear some responsibility for the dam failure if it can be shown that the **dam failure** was caused, in part, by the Corps' negligence or failure to maintain or monitor the dam properly.

- **Investigate the USACE's Role:** A legal argument could be made that FEMA's actions are improper because the dam failure was caused by the negligence or failure of USACE, and that FEMA should not be responsible for land acquisitions in the area when another federal agency was primarily responsible for ensuring the safety of the dam. This could form the basis for challenging FEMA's role in the acquisition process.
- **Hold USACE Accountable:** One avenue could be to focus on holding **USACE** legally responsible for the dam's failure. If it can be shown that the failure was due to **USACE's**

inaction, there could be a push for the Corps to bear the financial responsibility for the land buyouts and related recovery efforts, rather than FEMA or affected property owners.

6. Legal Challenges to FEMA's Buyout Program

A more direct challenge could be aimed at FEMA's specific **buyout program** under its **Hazard Mitigation Grant Program (HMGP)**. If the acquisitions are related to flooding or dam-related disasters, opponents could argue:

- The properties affected by the buyout should not be acquired because **federal responsibility** (in the case of the dam) lies with **USACE** rather than FEMA, and the appropriate entity to fund buyouts would be **USACE**.
- The properties may not be eligible for FEMA buyouts because the triggering disaster event (dam failure) was not a typical qualifying event for land acquisition under FEMA's criteria.

While FEMA's authority to acquire land is rooted in disaster relief and mitigation programs, there are several avenues through which land acquisitions could be stopped in situations like the **Lake Lure Dam** failure. Legal challenges, legislative action, public advocacy, and procedural challenges could all play a role in halting FEMA's involvement in land acquisition, especially if it is shown that FEMA's actions might be inappropriate or legally questionable in light of the **USACE's potential responsibility** for the dam's failure.

Dam failure can be considered a qualifying event for **FEMA land acquisition** under certain circumstances, particularly if the failure results in significant damage to property or loss of life. FEMA's **Hazard Mitigation Grant Program (HMGP)** and **Flood Mitigation Assistance (FMA)** program allow for property buyouts and relocation efforts in response to disasters, including dam failures, if the event leads to a federally declared disaster. Here's how dam failure may qualify:

1. FEMA's Hazard Mitigation Grant Program (HMGP)

- **Purpose:** The **HMGP** provides funding for hazard mitigation measures following a major disaster. The program aims to reduce the long-term risk of property damage and loss of life from natural disasters.
- **Eligibility:** If a dam failure causes a disaster that leads to a **federal disaster declaration**, FEMA can allocate funding under HMGP to acquire lands in the affected area. The buyout or relocation efforts aim to prevent future damages from recurring disasters, such as flooding or dam failures.
- **Conditions:** For property buyouts, FEMA typically requires that the land be deed-restricted for **open space** (i.e., the land cannot be redeveloped) to ensure it remains free of future risks related to the original hazard.

2. Flood Mitigation Assistance (FMA) Program

- **Purpose:** The **FMA** program provides funding specifically for projects that reduce flood risks, including property buyouts in flood-prone areas.
- **Eligibility:** If a dam failure leads to flooding, it could be eligible for funding under the **FMA** program. This program specifically focuses on properties in **Special Flood Hazard Areas** (SFHAs), and a dam failure could trigger flooding that meets these criteria.
- **Conditions:** Similar to HMGP, FEMA would aim to purchase and demolish homes or businesses that are repeatedly damaged, with the goal of mitigating the flood risk in the future.

3. Federal Disaster Declaration

- A **federal disaster declaration** must be issued by the President or FEMA to unlock the funding for either program. For a dam failure to qualify, the event must cause widespread damage that meets the criteria for a federal disaster declaration, such as:
 - Widespread flooding or infrastructure damage
 - Significant loss of life or property
 - The failure of infrastructure that leads to an imminent and severe hazard to public safety

4. Land Acquisition Process

If FEMA determines that a dam failure qualifies as a **disaster event**, the agency can proceed with the **land acquisition process**:

- FEMA assesses the affected area to identify properties that are at high risk of future damage.
- Property owners are offered compensation, usually at fair market value, for their properties.
- Acquired properties are typically **deed-restricted**, meaning they cannot be redeveloped, to prevent further development in high-risk areas.

5. Dam Failure and Its Impact on FEMA's Decision-Making

While FEMA's buyout programs are often linked to floods, a **dam failure** that causes extensive flooding or other hazards would fit within the broad criteria for FEMA's assistance. The presence of **significant structural failure** leading to **disaster-level flooding** or a **sudden loss of life** could make the event eligible for both **federal disaster declarations** and FEMA's land acquisition programs.

Dam failure, particularly if it leads to a disaster-level event like flooding, can indeed qualify as a **disaster event** eligible for **FEMA land acquisition** under programs like **HMGP** and **FMA**. If the failure of a dam results in significant damage and warrants a federal disaster declaration, FEMA can acquire property in affected areas to reduce future risks and mitigate the damage from recurring disasters. However, the specific nature of the event (flooding, infrastructure collapse, etc.) and the actions taken by other agencies (like **USACE**) will play a role in determining the exact process and eligibility.

The U.S. Army Corps of Engineers (USACE) plays a crucial role in managing and regulating the safety of dams in the United States, including situations like the Lake Lure Dam issue. The following congressional and executive actions outline the responsibilities and authority that the USACE holds in matters of dam safety, flood control, and infrastructure management:

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- **Relevance to Lake Lure Dam:** If the **Lake Lure Dam** was identified as a hazard, the **USACE** would be responsible for recommending actions to strengthen or repair the structure and could provide technical assistance for ensuring its safety in future storm events.

4. The National Response Framework (NRF)

- **Key Responsibility:** The **NRF**, issued by the **Department of Homeland Security (DHS)**, guides federal, state, and local responses to disasters. It outlines roles for federal agencies, including the **USACE**, in mitigating and responding to emergencies. The **USACE** plays a role in both immediate and long-term recovery efforts, especially in managing flood risks and securing critical infrastructure after a disaster.
- **Relevance to Lake Lure Dam:** In the event of a dam failure during a natural disaster like **Hurricane Helene**, the **USACE** would play a central role in evaluating flood risk, stabilizing affected areas, and providing engineering support for recovery efforts.

5. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)

- **Key Responsibility:** This Act provides the legal framework for federal disaster response and recovery. While the **FEMA** administers most of the relief, the **USACE** is tasked with specific duties, particularly in flood control, recovery operations, and restoring critical infrastructure after a disaster.
- **Relevance to Lake Lure Dam:** Following the potential failure of a dam like **Lake Lure**, the **USACE** would be responsible for stabilizing flood-prone areas, conducting technical assessments of infrastructure, and coordinating with local authorities and FEMA to address the emergency.

6. Emergency Management Assistance Compact (EMAC)

- **Key Responsibility:** This interstate compact allows states to assist each other during disasters. While the **USACE** is a federal entity, it often works in tandem with state-level emergency response efforts to provide engineering expertise and support in the aftermath of disasters.
- **Relevance to Lake Lure Dam:** In the event of a dam breach or major flooding, the **USACE** could assist the affected state (North Carolina) with technical expertise in flood control, evaluating the damage, and implementing mitigation strategies.

7. The Homeland Security Act of 2002 (Public Law 107-296)

- **Key Responsibility:** The **Homeland Security Act** established the **Department of Homeland Security (DHS)** and formalized coordination between federal agencies like **USACE**, FEMA, and others in responding to national emergencies. The **USACE** contributes its engineering and technical expertise in both mitigation and recovery efforts, particularly concerning infrastructure resilience.
- **Relevance to Lake Lure Dam:** The **USACE** could be called upon to assist with stabilizing critical infrastructure like the **Lake Lure Dam** during a national disaster and to implement long-term solutions to avoid such hazards in the future.

8. Executive Orders Related to National Security and Infrastructure (e.g., Executive Order 13636, 2013)

- **Key Responsibility:** Executive Orders like **EO 13636** (focused on critical infrastructure protection) highlight the role of federal agencies, including the **USACE**, in assessing and ensuring the safety of critical infrastructure—such as dams and flood control systems—against natural and man-made threats.
- **Relevance to Lake Lure Dam:** Under the **USACE**'s role as part of national infrastructure protection efforts, the agency is responsible for overseeing the safety of dams, especially those that pose a risk to public safety. The failure of the **Lake Lure Dam** could be seen as a failure to assess and address infrastructure vulnerabilities, which falls under the **USACE**'s remit.

9. Water Resources Development Act (WRDA) 2020

- **Key Responsibility:** The **WRDA** legislation passed in 2020 addresses federal responsibilities for water management, including dam safety. The **USACE** is tasked with identifying high-risk dams and overseeing efforts to strengthen and maintain these structures.
- **Relevance to Lake Lure Dam:** If the **Lake Lure Dam** had been officially classified as a **high-risk dam**, the **USACE** would have been required to play a direct role in ensuring its safety, possibly recommending mitigation strategies and repairs.

Summary of Key Responsibilities

The **U.S. Army Corps of Engineers** is involved in dam safety and flood control through its authority under various pieces of legislation. Its key responsibilities include:

- Inspecting and assessing the safety of dams,
- Providing technical expertise in designing and constructing flood control projects,
- Supporting emergency response operations in flood-prone areas,
- Assisting with infrastructure recovery in the aftermath of disasters, and
- Implementing mitigation measures to reduce risks associated with aging or hazardous infrastructure.

While the **Lake Lure Dam** had been flagged as hazardous due to aging infrastructure and structural concerns, the **USACE**, by virtue of its authority, had a duty to intervene. Had it carried out timely inspections, repairs, and updates to the dam, it could have potentially prevented the catastrophic impact of **Hurricane Helene** in 2024.

The legality of FEMA's involvement in land acquisitions following a dam failure like the **Lake Lure Dam** situation is complex, especially considering the potential responsibility of the **U.S. Army Corps of Engineers (USACE)** in ensuring dam safety. To fully understand the situation, we need to examine FEMA's legal framework and the specific roles and responsibilities of both FEMA and USACE in disaster management, as well as any potential overlap.

FEMA's Authority for Land Acquisition

FEMA has the legal authority to acquire land under certain circumstances, specifically in the context of disaster response, recovery, and mitigation. Here are the key legal frameworks:

1. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)

- **Purpose:** The Stafford Act provides the primary legal basis for FEMA's disaster response and recovery operations. Under this Act, FEMA can assist with disaster recovery, which includes land acquisition for **hazard mitigation** and **floodplain management**. FEMA often uses land acquisition to relocate people out of flood-prone areas or mitigate future risks, such as in the case of homes located in flood zones or near structurally compromised dams.
- **FEMA's Role in Land Acquisition:** FEMA's authority to acquire land comes into play when the acquisition is aimed at reducing future disaster risk. This includes efforts to **buy out properties in flood-prone areas** to prevent future loss of life or property damage. FEMA's **Hazard Mitigation Grant Program (HMGP)** is often used for these purposes.
- **Legal Basis:** FEMA can purchase properties located in areas identified as high-risk for future disasters, particularly after a major disaster, as part of its mission to reduce the impact of future events. The Stafford Act gives FEMA broad powers in this regard.

2. Floodplain Management and Flood Mitigation

- **Floodplain Buyouts:** FEMA can also assist state and local governments in acquiring land in floodplain areas. This program focuses on the permanent relocation of structures from flood-prone zones, which may be particularly relevant after an event like the Lake Lure Dam failure, especially if the dam's failure exacerbates flooding in surrounding areas.

- **Authority:** The **National Flood Insurance Act of 1968** and the **Flood Disaster Protection Act of 1973** empower FEMA to act in managing flood risks and floodplain development.

3. Emergency Management and Mitigation Programs

- FEMA's mitigation programs can involve the purchase of properties in areas deemed dangerous due to the risk of natural disasters, including those that may have been affected by structural failures like dam breaches.

USACE's Role and Legal Responsibility

The **U.S. Army Corps of Engineers** has its own responsibilities regarding dam safety and flood management, particularly under the **Flood Control Act of 1936** and **Dam Safety Program**. The failure of the **Lake Lure Dam** could be attributed to **USACE's failure to maintain or properly assess** the dam, leading to public safety concerns. If it can be shown that the **USACE** neglected its duty to address the dam's structural integrity, there may be grounds for questioning whether the dam failure could have been prevented.

- **USACE Duty:** The **USACE** is responsible for inspecting dams, ensuring they meet safety standards, and implementing repairs as needed to prevent catastrophic failure. The failure of **Lake Lure Dam**, which may have contributed to flooding or disaster-related loss, would indicate a lapse in fulfilling these duties.
- **Overlap of Responsibility:** If the failure of the **Lake Lure Dam** was a direct result of **USACE's failure** to act or maintain the dam in a safe condition, questions could arise about the **USACE's liability** for damages caused by the failure. This might affect how land acquisition decisions are made, especially if FEMA needs to assist with recovery due to a failure attributed to a federal agency.

Legal Challenges and Potential Concerns

- **Liability and Fault:** If the failure of the **Lake Lure Dam** was caused by negligence on the part of the **USACE**, FEMA's land acquisition actions may face legal challenges. Those affected by the dam failure may seek to hold the **USACE** accountable for their actions (or lack thereof). However, FEMA would still have the legal right to conduct land acquisitions under its disaster relief and mitigation authority, as its mission is to reduce future risks to life and property, regardless of which agency is at fault for the disaster.
- **FEMA's Role in Land Acquisition After Dam Failures:** FEMA's land acquisition efforts would likely be focused on acquiring properties at risk of flooding or similar hazards due to the dam failure. If FEMA proceeds with acquisitions in these areas, it would be acting within its legal rights to mitigate future risks and reduce the potential for loss of life or property damage. However, the **USACE's role** in the dam's failure could lead to questions about responsibility for the disaster, potentially leading to claims against the federal government.

Conclusion: Is it Legal for FEMA to Conduct Land Acquisitions?

Yes, it is **legal for FEMA to conduct land acquisitions**, even in situations like the **Lake Lure Dam failure**, provided the acquisitions are part of **disaster relief, recovery, and hazard mitigation** efforts. FEMA's land acquisition efforts would be aimed at reducing future disaster risks in the area and are authorized under various disaster-related legal frameworks, including the **Stafford Act** and the **National Flood Insurance Act**.

However, the situation becomes more complex when considering that the **USACE** may have failed in its duties to maintain or assess the **Lake Lure Dam**, leading to the dam failure. While FEMA can legally acquire land, the **USACE** could face scrutiny for not fulfilling its responsibility to ensure the safety of the dam. This could lead to legal challenges or calls for increased accountability and potentially affect the focus of land acquisition or disaster recovery efforts.

Stopping **FEMA** from acquiring land in the case of a disaster like the **Lake Lure Dam** failure would require legal, procedural, and policy-based challenges. There are several ways in which this could be pursued, particularly if there is concern that FEMA's actions might not be appropriate or justified in light of other agencies' responsibilities (like the **U.S. Army Corps of Engineers**, which may be partially responsible for the dam failure). Here are potential methods for halting FEMA's land acquisition:

1. Legal Challenges in Court

One way to prevent FEMA from acquiring land is by filing a lawsuit challenging the legality of the acquisition. A legal challenge could be based on several arguments:

- **Improper Use of Federal Funds:** Argue that FEMA is misusing federal disaster relief funds for land acquisition that does not align with its core mission of disaster response and mitigation, particularly if the acquisition is seen as unnecessary or unjustified.
- **Violation of Property Rights:** Property owners could argue that FEMA's actions violate their constitutional rights under the **Fifth Amendment**, which includes protections against **eminent domain** without just compensation. If the property owners feel that FEMA is overstepping its authority or that the land acquisition is excessive, they could challenge it in court.
- **Agency Jurisdiction and Authority:** Argue that FEMA does not have the legal authority to acquire land in this specific situation, particularly if it is shown that the primary responsibility for dam safety lies with another agency like the **U.S. Army Corps of Engineers (USACE)**. If FEMA's land acquisition stems from the failure of a federally managed infrastructure (i.e., the dam), this could form the basis of a jurisdictional dispute.

2. Legislative Action

Congress could intervene to limit FEMA's authority in land acquisition for specific cases or regions, especially if there is public concern about the **Lake Lure Dam** incident or similar situations.

- **Amendment to the Stafford Act:** Congress could pass legislation that limits or conditions FEMA's ability to purchase land for certain types of hazards, especially when it involves issues outside FEMA's scope of responsibility, such as the **USACE's failure** to maintain or assess the dam. For instance, Congress could mandate that FEMA must consult with other agencies (like the **USACE**) before proceeding with such acquisitions.
- **Create Restrictions or Oversight:** Congress could impose additional checks and balances, such as a requirement for **independent oversight** or approval before FEMA proceeds with land acquisitions in areas impacted by infrastructure failures (e.g., dams), thereby ensuring that all relevant agencies are held accountable.

3. Public Advocacy and Political Pressure

Public and political pressure can be a significant deterrent against government actions, including land acquisitions by FEMA. Local governments, activists, property owners, or stakeholders can take steps to influence the situation:

- **Petitions and Advocacy:** Local communities or environmental groups could mobilize to gather signatures and raise awareness about the potential negative consequences of FEMA's land acquisition. A well-organized campaign could generate significant pressure on elected officials to intervene.
- **Political Lobbying:** Elected representatives from the affected areas could lobby FEMA or Congress to halt the acquisition process. If members of Congress believe their constituents are opposed to the acquisitions, they may act on behalf of their electorate to block FEMA's actions.
- **State and Local Opposition:** State and local governments, especially those directly impacted by FEMA's land acquisition plans, can exert political pressure on FEMA to stop or delay acquisitions. They can pass resolutions or make public statements urging FEMA to reconsider its approach.

4. Challenging the Land Acquisition Process

If FEMA's land acquisition process is already in motion, there may be procedural steps that can be taken to halt the process. These include:

- **Review of Environmental Impact:** Property owners or local governments could request a formal **environmental impact statement (EIS)** review to determine whether FEMA's land acquisition would cause unintended negative consequences. If the impact of the land

acquisition has not been fully evaluated, legal arguments could be made to delay or halt the process.

- **Public Hearing or Comment Period:** FEMA is often required to hold **public hearings** or provide opportunities for comment on land acquisitions, particularly when large amounts of public land are involved. Property owners or concerned citizens could use these opportunities to challenge the land acquisition based on its perceived harm or lack of justification.

5. Focus on Responsibility of Other Agencies (e.g., USACE)

The **U.S. Army Corps of Engineers (USACE)** may bear some responsibility for the dam failure if it can be shown that the **dam failure** was caused, in part, by the Corps' negligence or failure to maintain or monitor the dam properly.

- **Investigate the USACE's Role:** A legal argument could be made that FEMA's actions are improper because the dam failure was caused by the negligence or failure of USACE, and that FEMA should not be responsible for land acquisitions in the area when another federal agency was primarily responsible for ensuring the safety of the dam. This could form the basis for challenging FEMA's role in the acquisition process.
- **Hold USACE Accountable:** One avenue could be to focus on holding **USACE** legally responsible for the dam's failure. If it can be shown that the failure was due to **USACE's inaction**, there could be a push for the Corps to bear the financial responsibility for the land buyouts and related recovery efforts, rather than FEMA or affected property owners.

6. Legal Challenges to FEMA's Buyout Program

A more direct challenge could be aimed at FEMA's specific **buyout program** under its **Hazard Mitigation Grant Program (HMGP)**. If the acquisitions are related to flooding or dam-related disasters, opponents could argue:

- The properties affected by the buyout should not be acquired because **federal responsibility** (in the case of the dam) lies with **USACE** rather than FEMA, and the appropriate entity to fund buyouts would be **USACE**.
- The properties may not be eligible for FEMA buyouts because the triggering disaster event (dam failure) was not a typical qualifying event for land acquisition under FEMA's criteria.

While FEMA's authority to acquire land is rooted in disaster relief and mitigation programs, there are several avenues through which land acquisitions could be stopped in situations like the **Lake Lure Dam** failure. Legal challenges, legislative action, public advocacy, and procedural challenges could all play a role in halting FEMA's involvement in land acquisition, especially if it is shown that FEMA's actions might be inappropriate or legally questionable in light of the **USACE's potential responsibility** for the dam's failure.

Dam failure can be considered a qualifying event for **FEMA land acquisition** under certain circumstances, particularly if the failure results in significant damage to property or loss of life. FEMA's **Hazard Mitigation Grant Program (HMGP)** and **Flood Mitigation Assistance (FMA)** program allow for property buyouts and relocation efforts in response to disasters, including dam failures, if the event leads to a federally declared disaster. Here's how dam failure may qualify:

1. FEMA's Hazard Mitigation Grant Program (HMGP)

- **Purpose:** The **HMGP** provides funding for hazard mitigation measures following a major disaster. The program aims to reduce the long-term risk of property damage and loss of life from natural disasters.
- **Eligibility:** If a dam failure causes a disaster that leads to a **federal disaster declaration**, FEMA can allocate funding under HMGP to acquire lands in the affected area. The buyout or relocation efforts aim to prevent future damages from recurring disasters, such as flooding or dam failures.
- **Conditions:** For property buyouts, FEMA typically requires that the land be deed-restricted for **open space** (i.e., the land cannot be redeveloped) to ensure it remains free of future risks related to the original hazard.

2. Flood Mitigation Assistance (FMA) Program

- **Purpose:** The **FMA** program provides funding specifically for projects that reduce flood risks, including property buyouts in flood-prone areas.
- **Eligibility:** If a dam failure leads to flooding, it could be eligible for funding under the **FMA** program. This program specifically focuses on properties in **Special Flood Hazard Areas (SFHAs)**, and a dam failure could trigger flooding that meets these criteria.
- **Conditions:** Similar to HMGP, FEMA would aim to purchase and demolish homes or businesses that are repeatedly damaged, with the goal of mitigating the flood risk in the future.

3. Federal Disaster Declaration

- A **federal disaster declaration** must be issued by the President or FEMA to unlock the funding for either program. For a dam failure to qualify, the event must cause widespread damage that meets the criteria for a federal disaster declaration, such as:
 - Widespread flooding or infrastructure damage
 - Significant loss of life or property
 - The failure of infrastructure that leads to an imminent and severe hazard to public safety

4. Land Acquisition Process

If FEMA determines that a dam failure qualifies as a **disaster event**, the agency can proceed with the **land acquisition process**:

- FEMA assesses the affected area to identify properties that are at high risk of future damage.
- Property owners are offered compensation, usually at fair market value, for their properties.
- Acquired properties are typically **deed-restricted**, meaning they cannot be redeveloped, to prevent further development in high-risk areas.

5. Dam Failure and Its Impact on FEMA's Decision-Making

While FEMA's buyout programs are often linked to floods, a **dam failure** that causes extensive flooding or other hazards would fit within the broad criteria for FEMA's assistance. The presence of **significant structural failure** leading to **disaster-level flooding** or a **sudden loss of life** could make the event eligible for both **federal disaster declarations** and FEMA's land acquisition programs.

Dam failure, particularly if it leads to a disaster-level event like flooding, can indeed qualify as a **disaster event** eligible for **FEMA land acquisition** under programs like **HMGP** and **FMA**. If the failure of a dam results in significant damage and warrants a federal disaster declaration, FEMA can acquire property in affected areas to reduce future risks and mitigate the damage from recurring disasters. However, the specific nature of the event (flooding, infrastructure collapse, etc.) and the actions taken by other agencies (like **USACE**) will play a role in determining the exact process and eligibility.