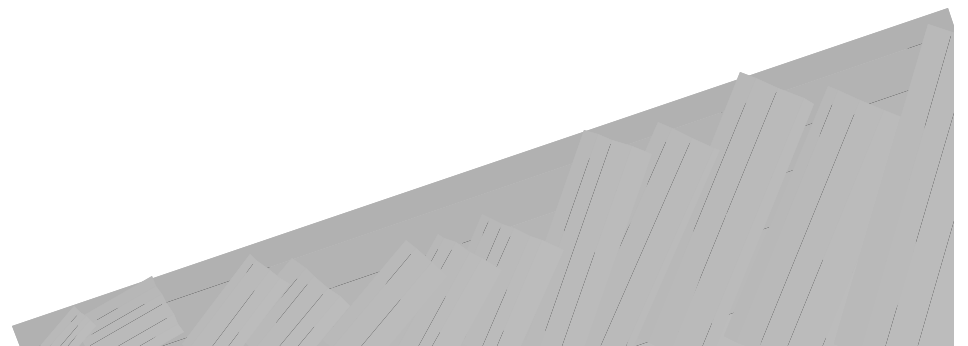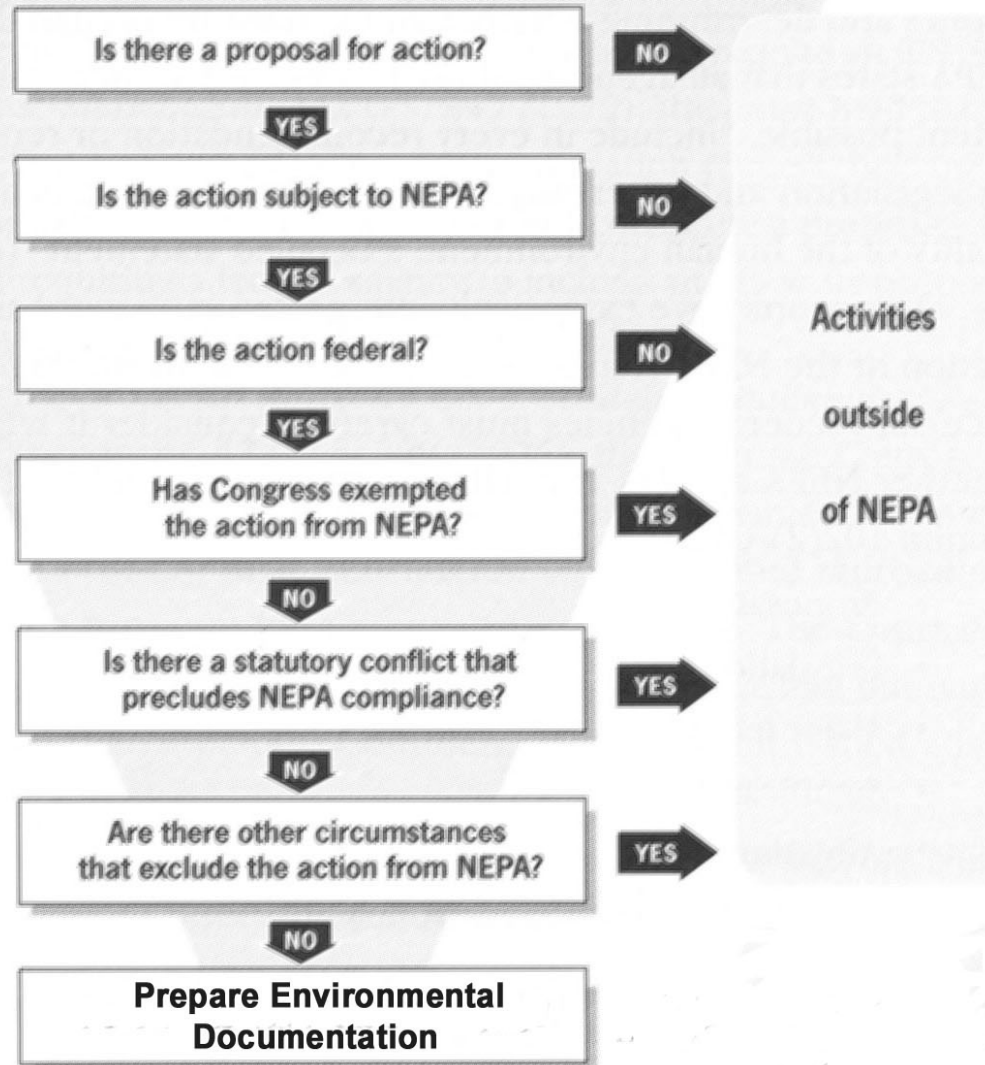# Compliance with NEPA

NEPA's Applicability

NEPA requires federal agencies to prepare an EIS for "proposals for legislation and other major federal actions significantly affecting the quality of the human environment."

◆ Proposals
◆ Legislation
◆ Major Federal Action
◆ Significantly
◆ Affecting
◆ Quality of human environment

Determining NEPA compliance for a proposed action

Is there a proposal for action? → NO

↓ YES

Is the action subject to NEPA? → NO

↓ YES

Is the action federal? → NO → Activities outside of NEPA

↓ YES

Has Congress exempted the action from NEPA? → YES

↓ NO

Is there a statutory conflict that precludes NEPA compliance? → YES

↓ NO

Are there other circumstances that exclude the action from NEPA? → YES
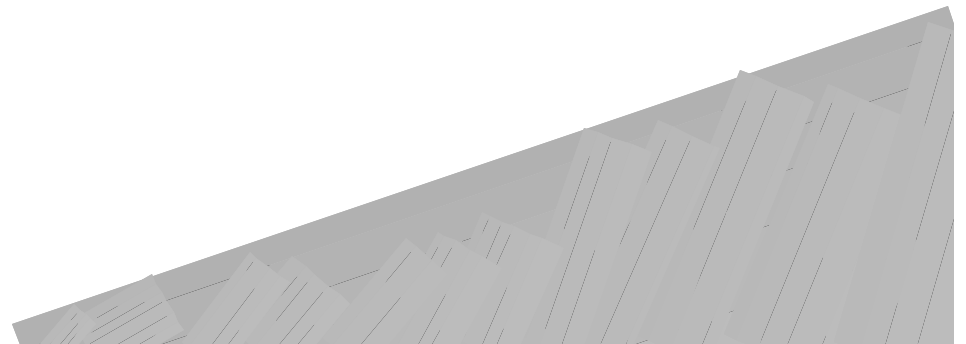
↓ NO

Prepare Environmental Documentation

"Proposals"

A proposal exists when a federal agency is actively proposing one or more alternatives

Does not include:

◆ Discussing ideas

◆ Planning studies for need
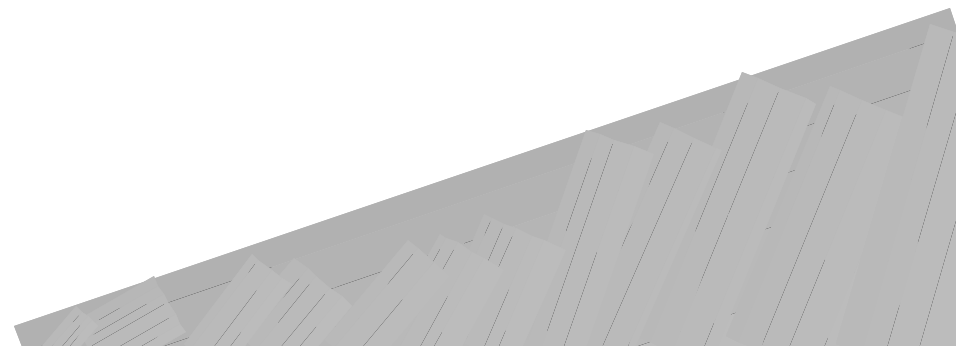
◆ Planning studies for feasibility

◆ Giving advice

"Legislation"

Any bill or legislative proposal submitted to Congress developed or supported by a federal agency

Does not include:

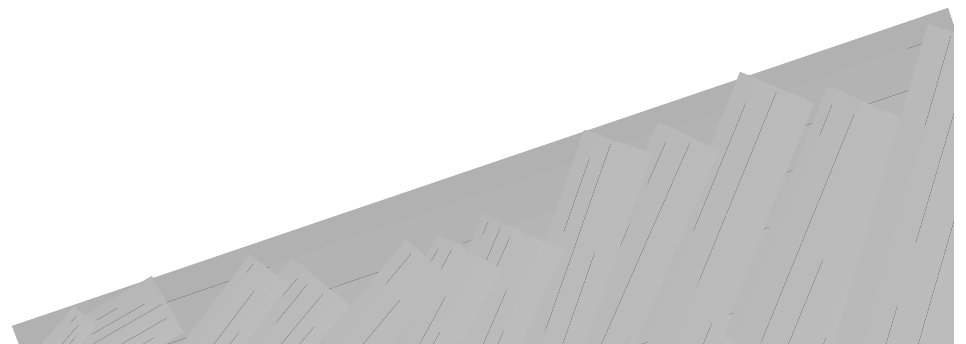◆ Bills initiated by Congress

◆ Requests for appropriations

"Major Federal Action"

Major refers to environmental effect <u>not</u> size of action

Include:
- Federal activities proposed, financed, assisted or conducted by federal agency
- Nonfederal activities financed, assisted, permitted or approved by a federal agency
- New or revised federal agency rules, regulations, plans, policies, procedures or projects
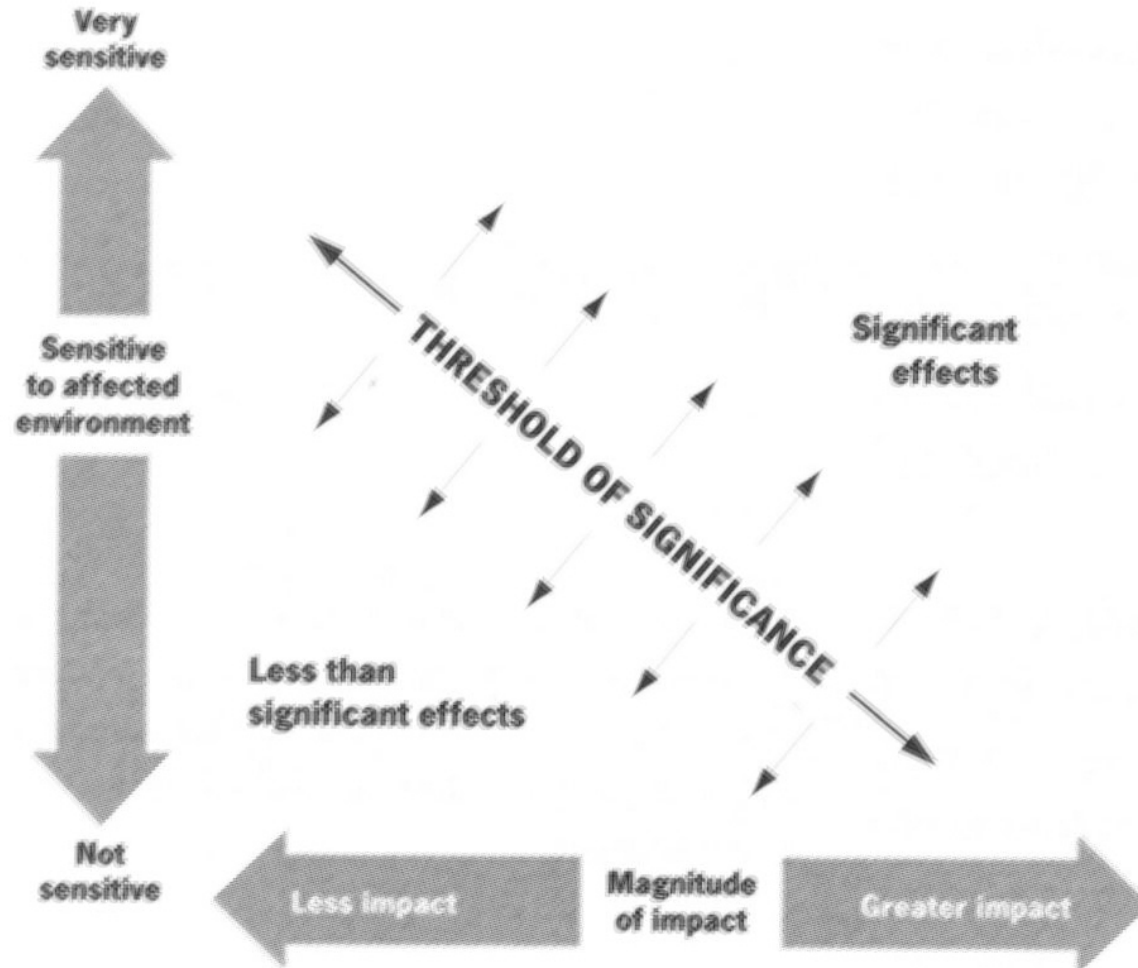- Proposals for legislation

"Major Federal Action"

Does not include:

◆ Ministerial actions

◆ Condemnation of Land

◆ Inaction

◆ Budgets or appropriation requests

◆ Reports to Congress

◆ Law enforcement/investigation

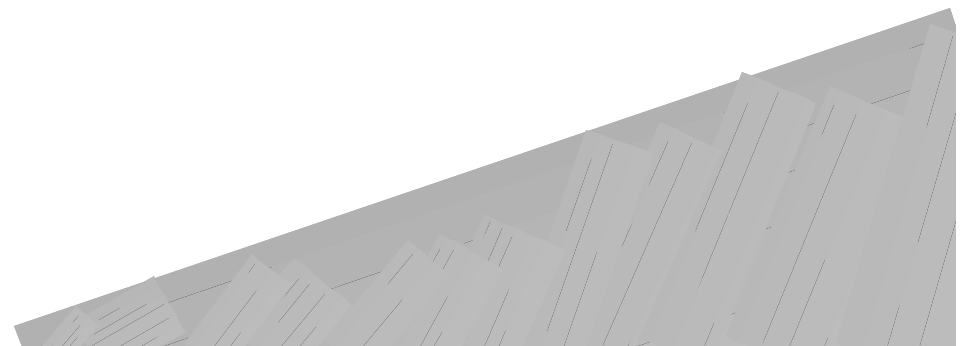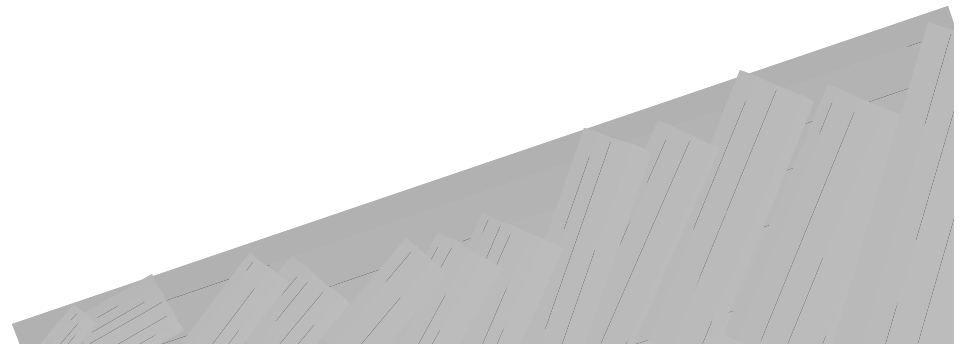# "Significantly"

"Affecting the quality of the human environment"

◆ Affect – will or may have an effect

◆ Quality of the human environment – natural and physical environment and relationship of people with the environment

Government Entities not Considered Federal Agencies

- The President
- The Executive Office of the President
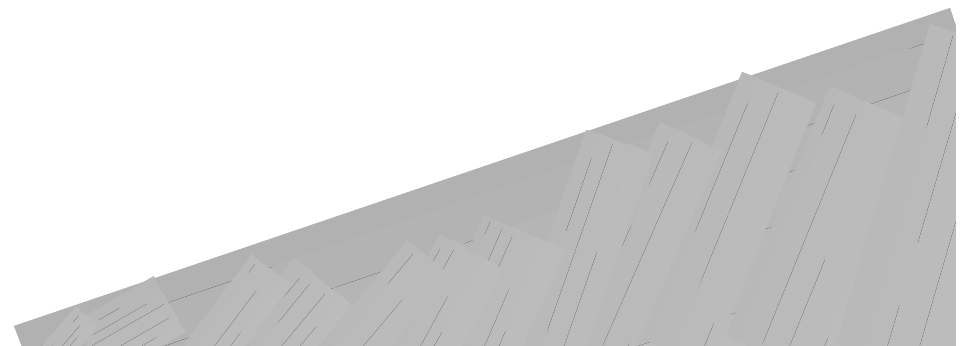- The Federal Judges

Connected Actions

Federal agency cannot segment proposed action into small pieces to avoid NEPA

Connected Actions to be Considered Together:
- ◆ Interrelated segments of same action
- ◆ Dependent actions
- ◆ Foreseeable future phase
- ◆ Irrational/Unwise separation of activities

Separate Actions

- Independent utility
- Independent justification of actions
- Too speculative
- Defeats good planning
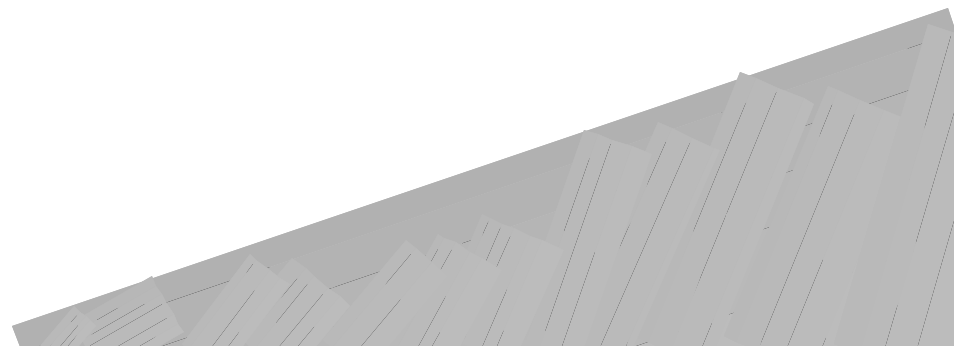
Nonfederal Actions Requiring NEPA

Action Need Federal:

◆ Permit

◆ Regulatory Decision

◆ Funding

◆ Other Assistance

"Small federal handle" rule excludes nonfederal portion of action

Exemptions from NEPA
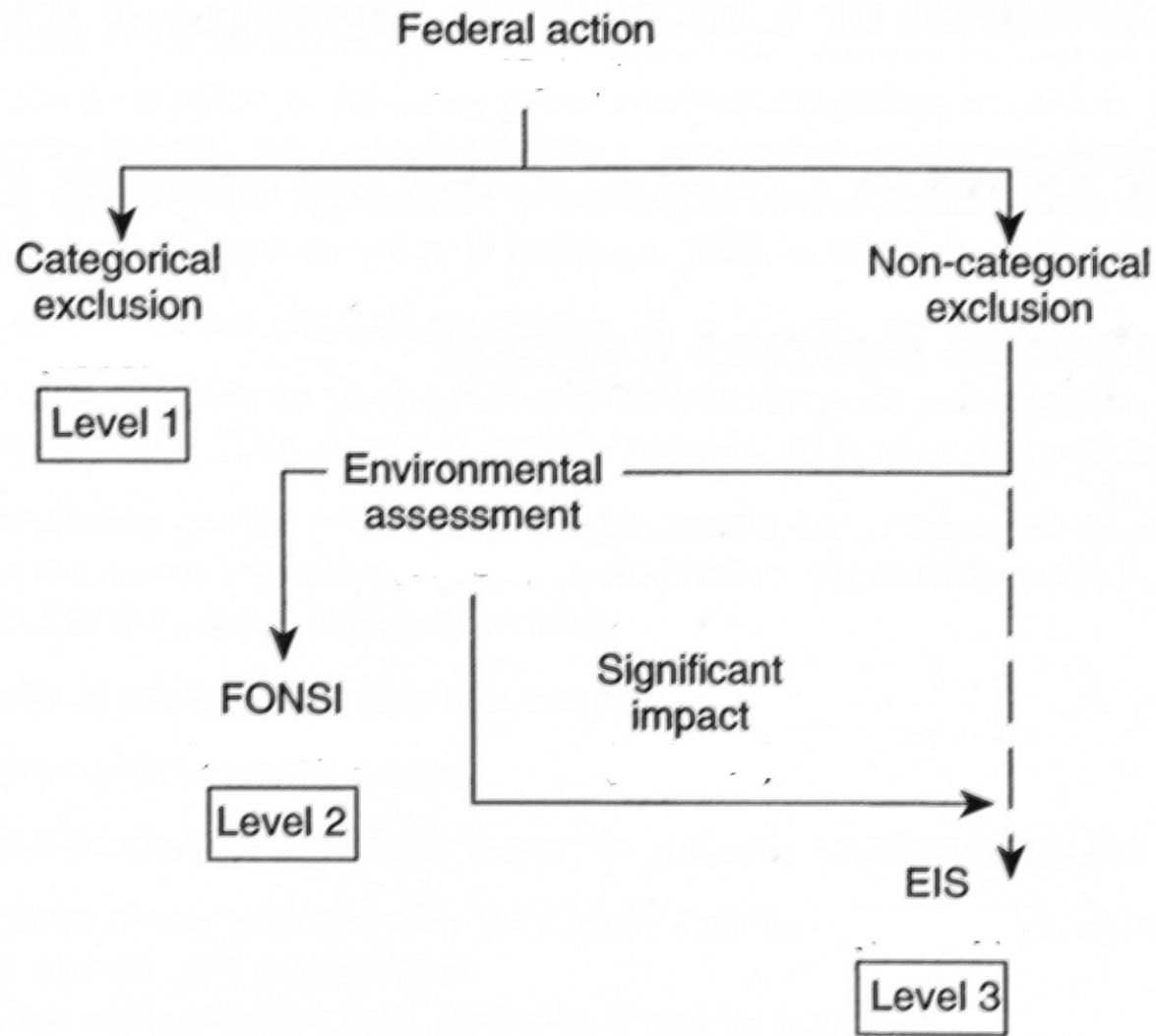
- Statutory
- Statutory Conflicts (usually over time)
- Endangered Species Act
- Emergencies
- Functional Equivalency
- Federal Activities Outside US

Application of NEPA

◆ NEPA does not require that every environmental issue be totally resolved.

◆ NEPA does not require that the environment be the primary factor in decision-making.

◆ NEPA does require that the environment be included in the decision process.

◆ The preferred alternative may have significant impacts.

◆ If environmental impacts are fully analyzed and disclosed and weighed with other factors (cost, feasibility, purpose of project) and mitigation is committed to, the agency has fulfilled its NEPA obligation.
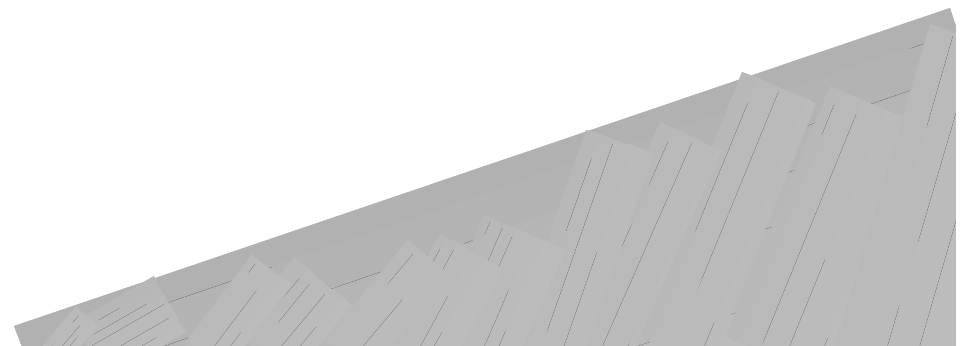
Levels of Analysis

Categorical Exclusion

- No Individual or Cumulative Significant Effect
- List of Types of Projects Pre-Approved by CEQ
- Published in Federal Register
- Documentation required by some federal agencies
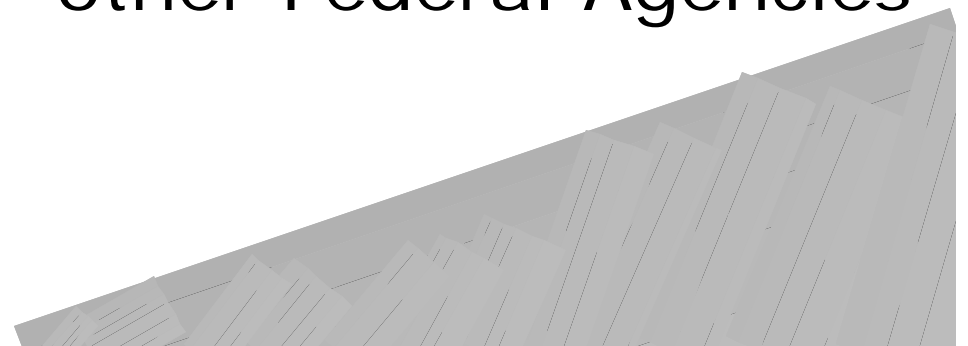- Exceptions for extraordinary circumstances

Exceptions to Categorical Exclusions

◆ Extraordinary circumstances which may potential to have significant impacts:

- Wetlands
- Endangered species
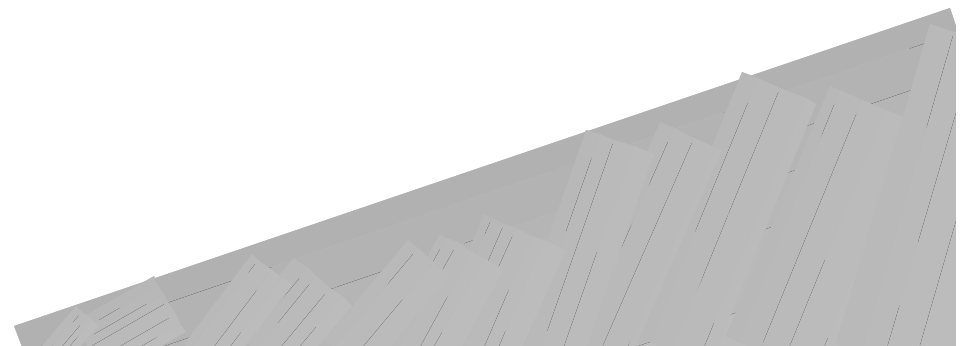- Historic resources
- Cumulative effects

US Army Corps of Engineers CEs

- Routine Maintenance
- Minor maintenance dredging
- Technical studies
- Real estate grants for excess property
- Exchange of property
- Real estate grants for minor disturbances
- Real estate grants for archaeological studies
- Disposal of existing buildings for removal
- Return of public domain lands to DOI
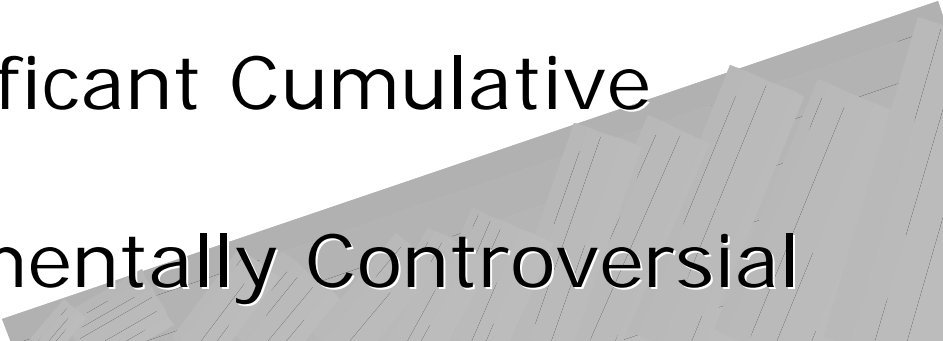- Transfer of lands to other Federal Agencies

CE for New Jersey Road Improvement

Actions Where an EIS Should be Prepared

- ◆ Causes Exceedence of Standards
- ◆ Likely to Have Significantly Adverse Impacts on:
  - – Natural Ecosystems
  - – Cultural Resources
  - – Scenic Resources
- ◆ Likely to Require Controversial Relocations
- ◆ Divide/Disrupt Established Neighborhoods
- ◆ Significant Secondary Growth
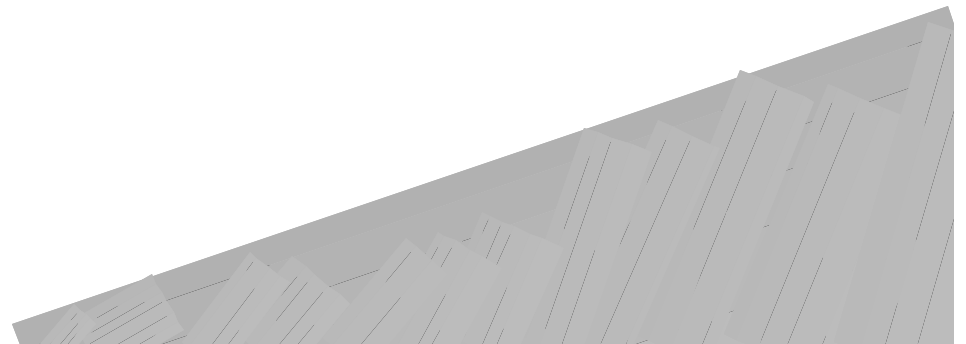- ◆ Inconsistent with Accepted Community Plans

EIS Actions (continued)

◆ Causes Contamination of Public Water Supply

◆ Affects Endangered or Threatened Species

◆ Likely to Have Significantly Adverse Impacts on:
  – Groundwater
  – Flooding
  – Erosion
  – Sedimentation

◆ Likely to Cause Significant Cumulative Adverse Impacts

◆ Likely to be Environmentally Controversial

Significantly Defined

Context
- ◆ National
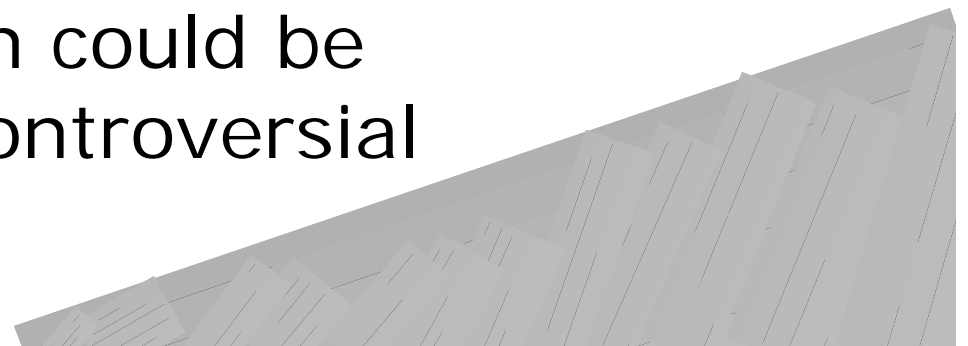- ◆ Affected Region
- ◆ Affected Interests
- ◆ Locality

Significantly Defined

Intensity (Severity of Impact)

- Beneficial and Adverse
- Public Health/Safety
- Unique Characteristics
- Highly Controversial
- Highly Uncertain/Unknown Risks
- Precedent for Future Actions
- Cumulative Impacts
- National Register of Historic Places
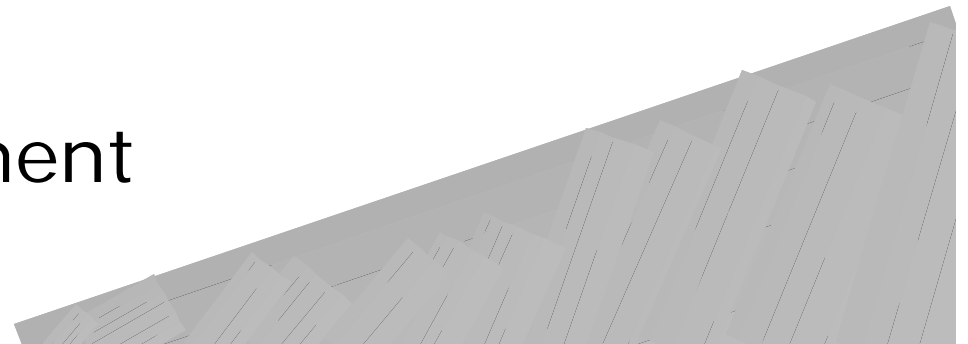- Endangered/Threatened Species
- Violation of Law

Environmental Assessments (EA) Should:

- Identify All Direct and Long-term Adverse Impacts
- Allow Decision Maker to Determine:
  - Whether the Proposed Action should be regarded as a "Major Action"
  - Whether the environmental impact is significant
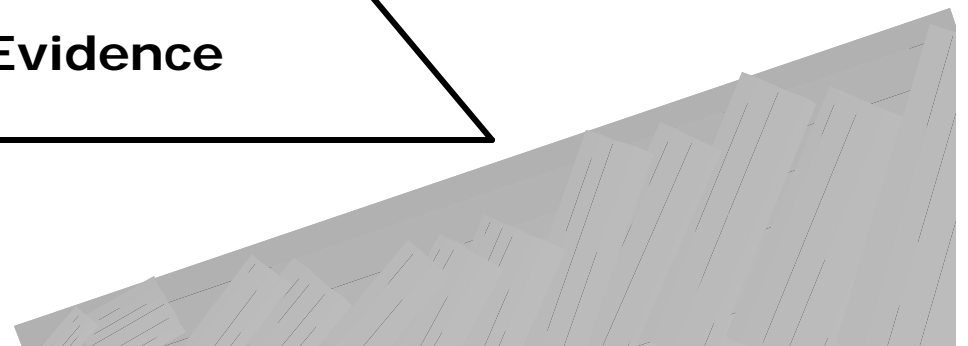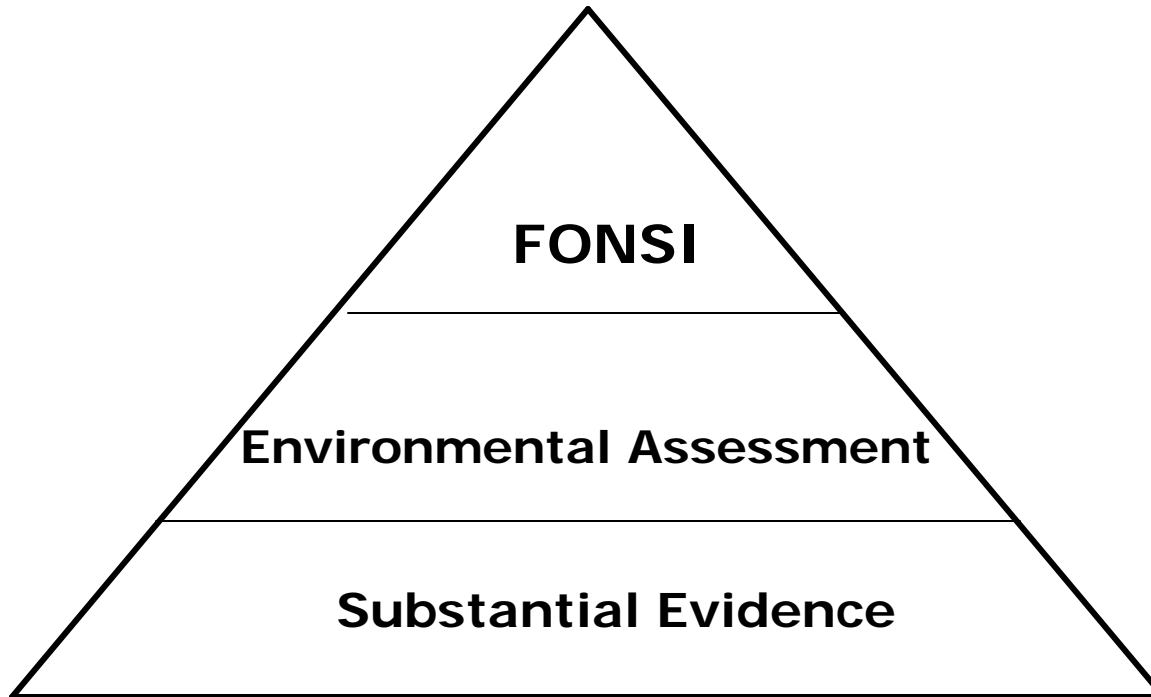 - Whether the action could be environmentally controversial

Environmental Assessment Process

- ◆ Define Purpose
- ◆ Define Preferred Action
- ◆ Scoping
- ◆ Identify Alternatives (Reject)
- ◆ Impact Analysis (focused)
  - Existing Conditions
  - Impacts (Significance)
- ◆ Mitigation
- ◆ Draft FONSI or EIS
- ◆ Draft ES
- ◆ Public/Agency Comment
- ◆ Final EA/Final FONSI

FONSI
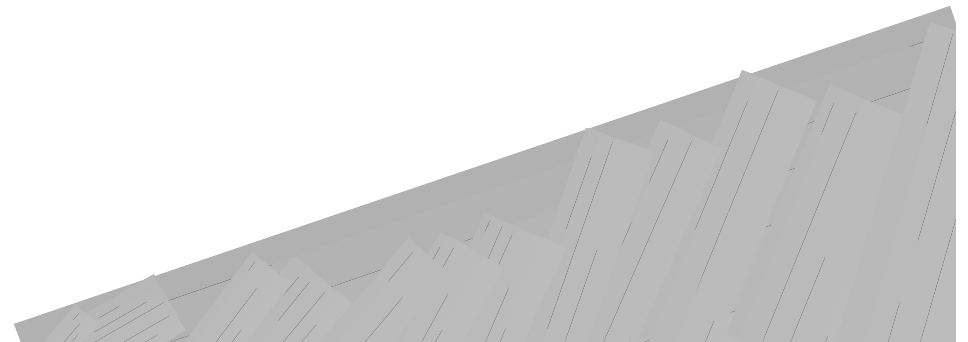
◆ Finding of No Significant Impacts

Mitigated FONSI

◆ Agency must demonstrate it has taken a hard look at environmental consequences

◆ Agency must show mitigation measures will reduce impacts to less-than-significant levels

◆ Mitigation must be specific and project related

◆ Agency committed to implementation

◆ FONSI supported by adequate EA

Aspects of the Environment Evaluated in an EA

- **Natural Environment**
  - Water Resources
  - Biological Resources
  - Geological Resources
  - Aesthetic Resources
  - Air Quality
- **Built Environment**
  - Transportation
  - Noise
  - Cultural Resources
  - Land Use
  - Population/Housing
  - Socioeconomic
  - Utilities
  - Public Services
- **Human Health**
  - Natural Disasters
  - Hazardous Materials

Review Airport MAX EA