



National Environmental Policy Act - a High-level Summary

Project Development

Planning System considerations, coordination, conformity, project need

NEPA/PE Purpose, need, alternatives and impact analysis, public/agency coordination, documentation (CE, EA/FONSI, EIS/ROD)

NEPA Approval: Location, design concept acceptance

Final Design

Right-of-Way

Construction

**Post NEPA
Project Development
Activities**

National Environmental Policy Act

- **Declare a national policy** to encourage productive and enjoyable harmony between man and environment
 - prevent or eliminate damage to the environment
 - stimulate the health and welfare of man
 - enrich understanding of natural resources important to the nation
- **Use all practical means and measures to**
 - foster and promote the general welfare
 - create and maintain conditions under which man and nature exist in productive harmony
 - fulfill social, economic, and other requirements of present and future generations of Americans
- **CEQ**

Decision-making Framework

- Use a systematic and interdisciplinary approach
- Environment given appropriate consideration with economic and technical considerations
- Include in proposals, a detailed statement on
 - environmental impacts of the action
 - adverse impacts which cannot be avoided
 - alternatives to the proposed action
 - consequences of taking the proposed action
- Consult with Federal agencies and involve the public

Federal Responsibility

- Trustees of the environment
- Assure safe, healthful, productive, esthetically and culturally pleasing surroundings
- Attain widest range of benefit without degradation or undesirable and unintended consequences
- Preserve important historic, cultural, and natural aspects
- Achieve balance between population and resource use
- Enhance the quality of the environment

“The purpose of NEPA is not to generate paperwork, even excellent paperwork, but to foster excellent action.”

-CEQ

NEPA Implementation



CEQ Regulations

Purpose, Policy and Mandate

- Implement the action forcing provisions
- Comply with procedures and achieve goals
- Promote better decisions not better documents
- Integrate NEPA with planning & processes
- Encourage, facilitate public involvement in decisions
- Reasonable alternatives, avoid and minimize effects
- Reduce paperwork and delay

Agency Implementing Regulations

- Environmental investigations, reviews, and consultations be coordinated as a single process
- Compliance with all applicable requirements be reflected in the environmental document
- Alternatives be evaluated and decisions be made in the best overall public interest
- Public involvement, systematic and interdisciplinary approach essential to project development
- Incorporate measures to mitigate adverse effects

NEPA Process “Umbrella”



NEPA

- Economic, social, and environmental effects analysis
- Public involvement, interagency coordination
- Tribal consultation
- Location, design, and engineering
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- Noise Standards
- Public Hearing Requirements
- Americans with Disabilities Act
- Endangered Species Act – Section 7
- Civil Rights Act
- Executive Order 12898 (Environmental Justice)
- Section 4(f) of USDOT Act (49 USC 303) - Parks, recreation, etc
- Clean Air Act
- Safe Water Drinking Act
- Clean Water Act
- Farmland Protection Policy Act
- National Historic Preservation Act
- Floodplains

Legal Review and Adequacy

- NEPA is procedural NOT substantive
- Adequacy is based on
 - “Hard Look”
 - Reasonableness
 - Not arbitrary and capricious
 - Full disclosure
- Compliance with other laws is demonstrated

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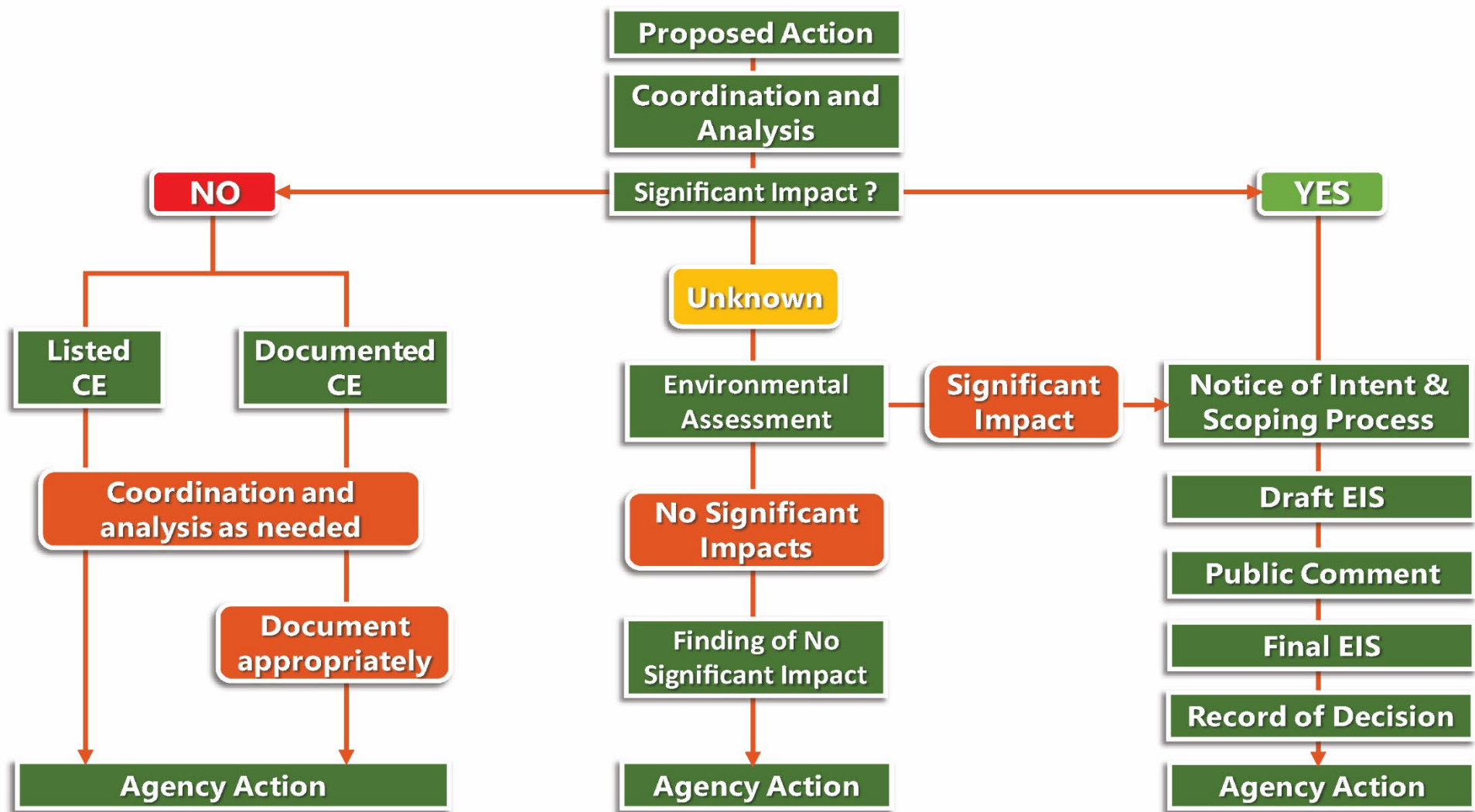
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Elements of the NEPA Process

- Purpose and Needs
- Alternatives analysis
- Impact analysis
- Mitigation
- Public involvement
- Interagency coordination
- Documentation

Purpose and Need

- Inform decisions
- Critical foundation for decisions
- Basis for reasonable alternatives, evaluations and comparisons
- Establishes reasons for moving forward with Federal action
- Basis for no-action discussion

Alternatives Analysis

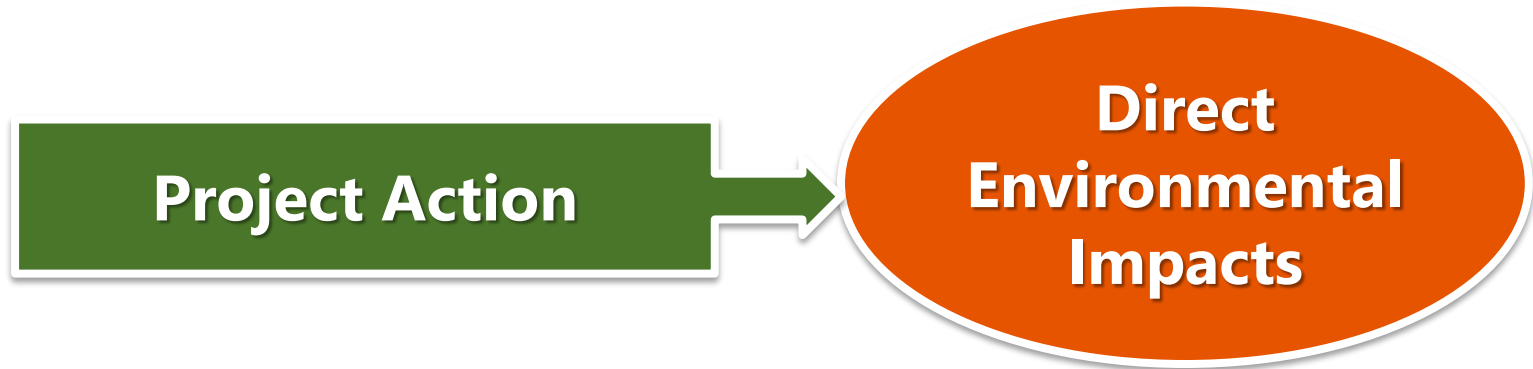
- Varies with Class of Action
- Rigorously explore and objectively evaluate
 - Reasonable range alternatives / reasonable number
- No-action / no-build always included
- Build alternatives – representative number
- Avoidance and minimization

Alternatives Documentation

- Describe how preliminary alternatives were developed and basis for elimination
- Describe how reasonable alternatives were chosen
- Clearly describe all reasonable alternatives
 - Comparable level of detail
 - Include discussion of the no-build
 - Be prepared to defend

Direct Impacts

- Direct impacts ...
 - caused by the action and occur at the same time and location



Indirect Impacts

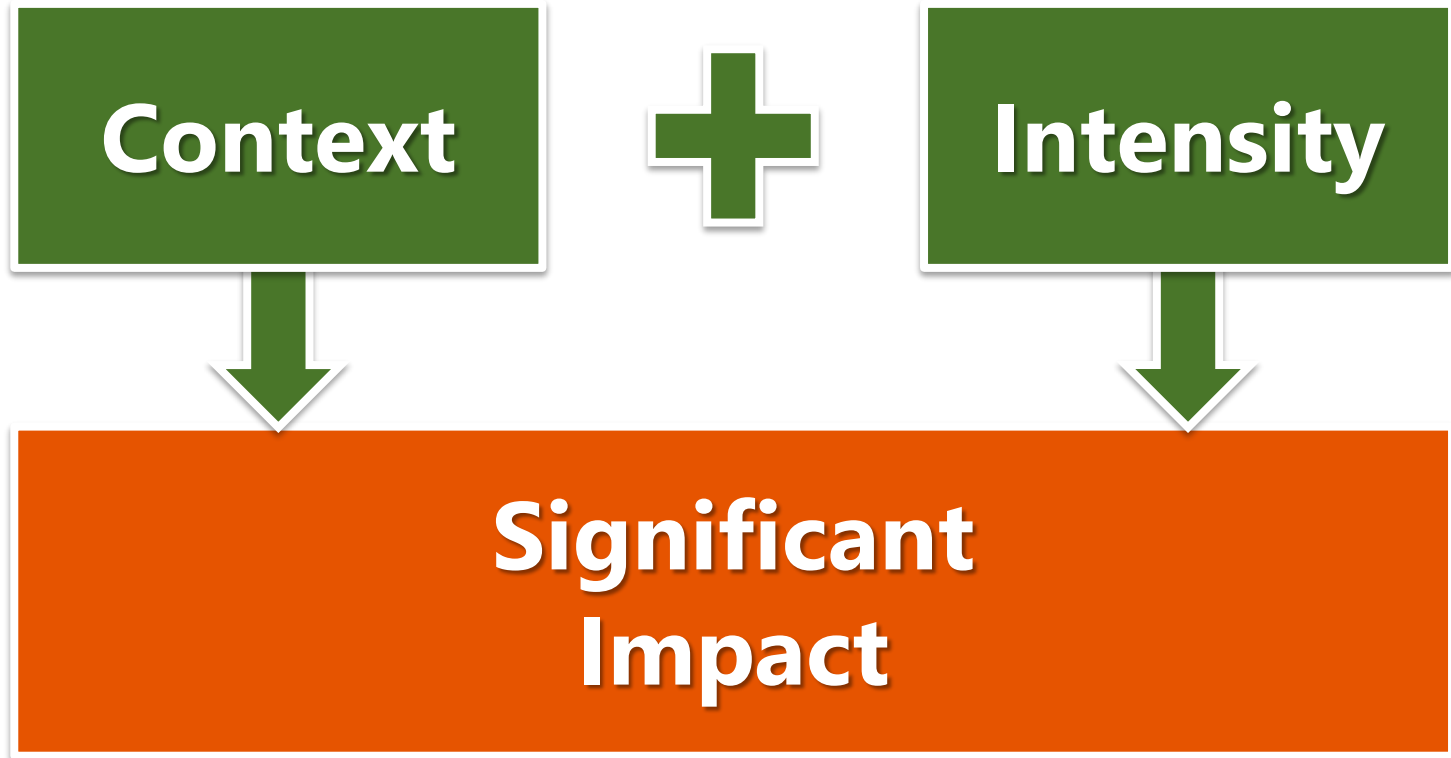
- Are caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable
 - growth inducing effects – related effects of changes in patterns of land use, population density, or growth rate



Cumulative Impacts

- Result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions
 - regardless of what agency or person undertakes such other actions
- Federal, non-federal, public and private must be considered

Significant Impacts

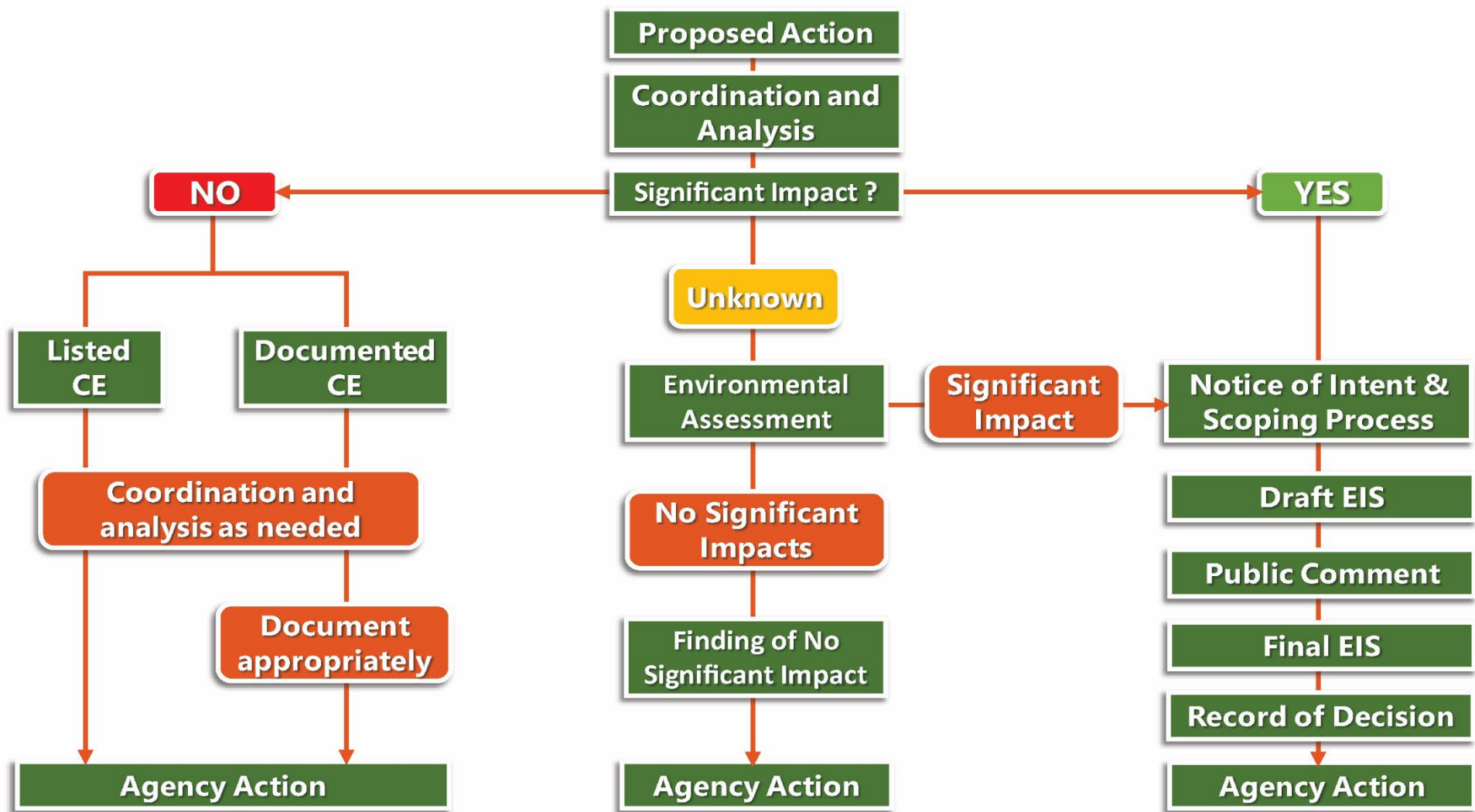


Context

- **Significance varies with setting**
 - Society as a whole
 - Affected region
 - Affected interests
 - Locality

Significant Impact Considerations

- Beneficial or adverse
- Public health or safety
- Uniqueness of area
- Controversy
- Degree of uncertainty or precedent-setting
- Cumulative impacts
- Section 106 properties
- Threatened or endangered species
- Violation of law



Federal Mitigation Policy

- Avoid
- Minimize
- Repair, Rehabilitate, Restore
- Preserve
- Compensate

Implementation Responsibility

- Implement mitigation measures stated as commitments in environmental documents
- Responsibility of the Applicant
- Ensure compliance through project management
- Formal monitoring plan may be established
 - Recommended, future requirement

Document Commitments

- CE - project record
- DEIS – alternatives on a conceptual basis
- FEIS – each alternative as comparison and specific to preferred alternative
 - summary, alternatives, environmental consequences
- ROD – commitments related to decision
- FONSI - commitments related to decision

Coordination and Involvement

- Prior to concluding an EIS, the responsible Federal official must:
 - consult with and obtain the comments of any Federal agency with jurisdiction by law or special expertise with the impacted resources
 - provide copies of statement to Federal, State and local agencies and the public

Public Involvement

- Coordination of public involvement activities and hearings with entire NEPA process
 - Early and continuous opportunities to be involved
 - Identification of social, economic, and environmental impacts

Interagency Coordination

- Early and continuous participation in the NEPA process
- Special expertise and information
- Scoping agreements and concurrences
- Establish timeframes
- Consultation and permitting
- Adoption of NEPA documents

Lead and Cooperating Agency

- Lead agency
 - Sponsoring agency - NEPA process and project proponent
- Cooperating agency
 - Federal agencies with jurisdiction by law (mandatory) or special expertise (optional)
 - State and local agencies
 - Tribes (on reservation)

Cooperating Agency Responsibility

- Respond to lead agency's request
 - Cooperate where jurisdiction by law
- Attend scoping and coordination meetings
- Provide meaningful and early input on issues of concern
- Participate in joint public involvement activities
- Review and provide comments on Pre-draft and Pre-final environmental documents

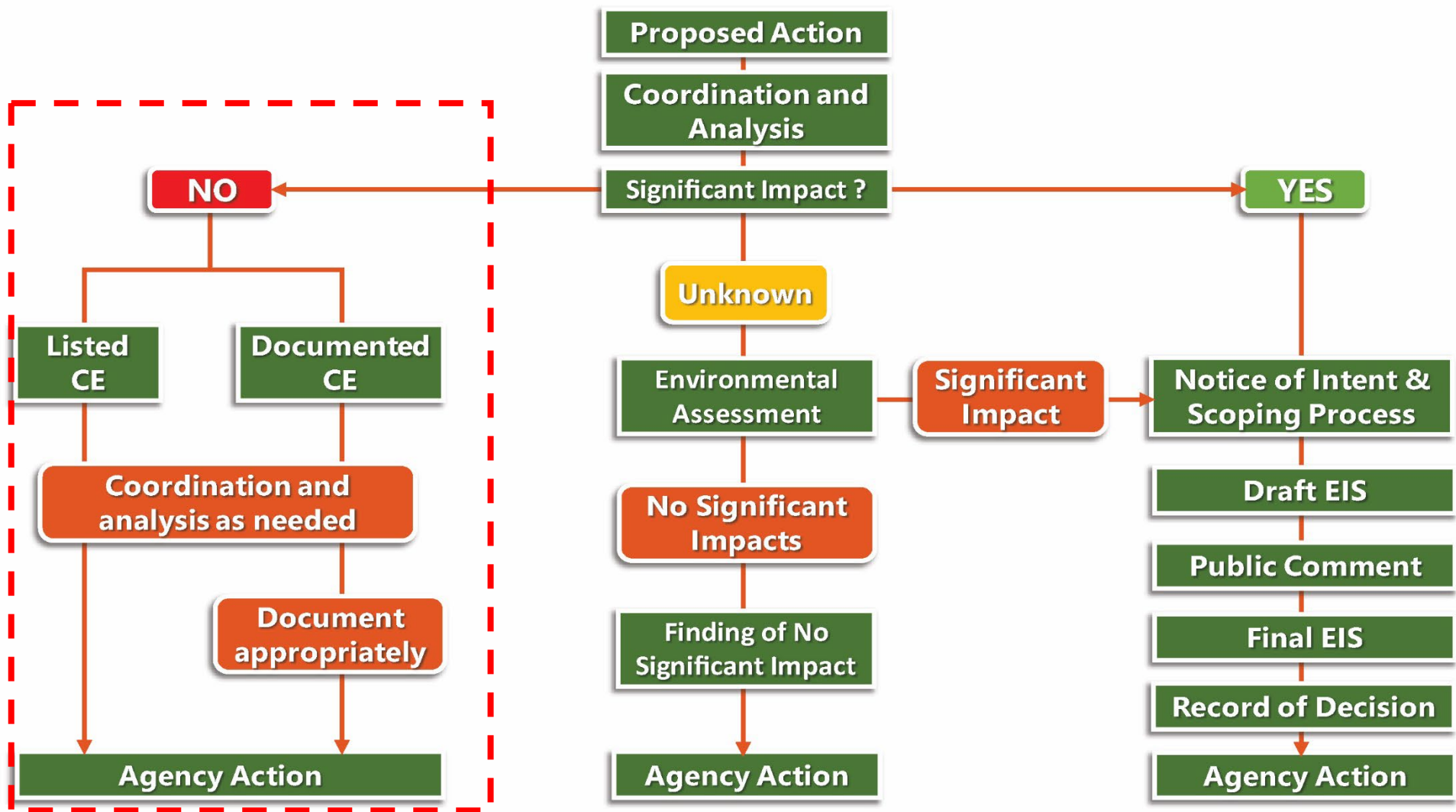
Cooperative Decisionmaking

- Public, agencies, and other stakeholders have a role in NEPA and decision-making
 - Continuous contribution at key stage
 - Identification and resolution of important issues
 - Establish project goals at local level
 - Alternatives development
 - Identify solutions to avoid, and minimize
 - Consensus and agreement

Scoping

- Continuation of early involvement with affected agencies and interested public
- Formally associated with EIS process
 - Invite participation
 - Determine the scope of the study
 - Determine important vs minor issues
 - Allocate assignments if appropriate
 - Identify other studies in area
 - Agree on timing of activities

40 CFR 1501.7
CEQ Scoping Guidance

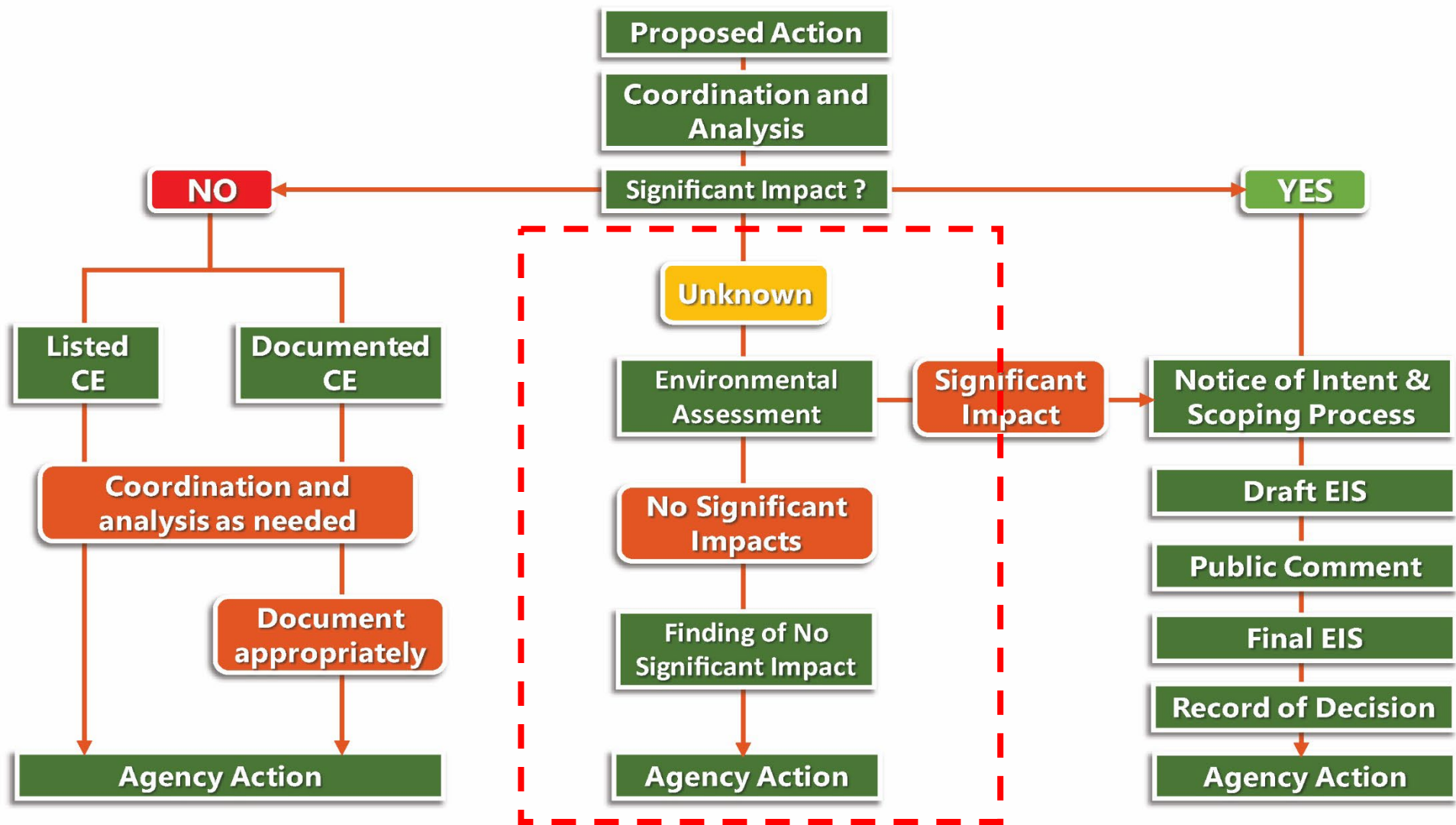


Categorical Exclusion

- CEQ - actions which do not individually or cumulatively have a significant effect on the human environment
- Actions which meet the CEQ definition and, based on past experience with similar actions, do not involve significant environmental impacts
- Neither an EA nor EIS is required

Analysis and Documentation

- Level of analysis and documentation is determined on a case-by-case basis
 - Commensurate with potential for impacts
 - Define the extent of impacts
 - Identify mitigations and commitments
 - Address known or foreseeable public and agency concerns
 - Address Federal and other actions required

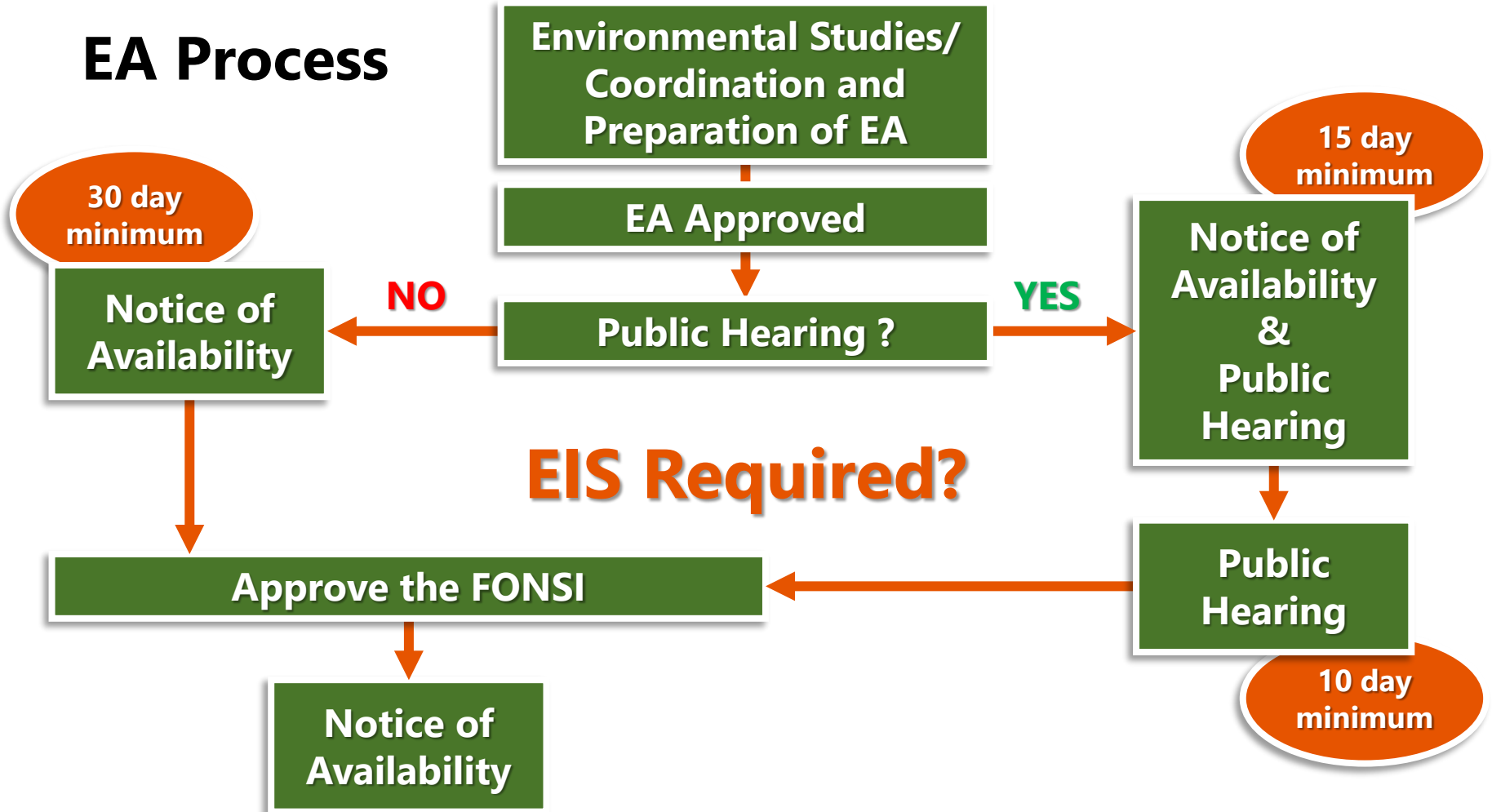


Environmental Assessment

- Document prepared for an action where the significance of the social, economic, and environmental impacts are not clearly established
 - Concise public document
 - Briefly provide evidence and analysis
 - Include brief discussions of most relevant issues
 - Not contain long descriptions or detailed data
 - Not mini EISs

40 CFR 1508.9

EA Process



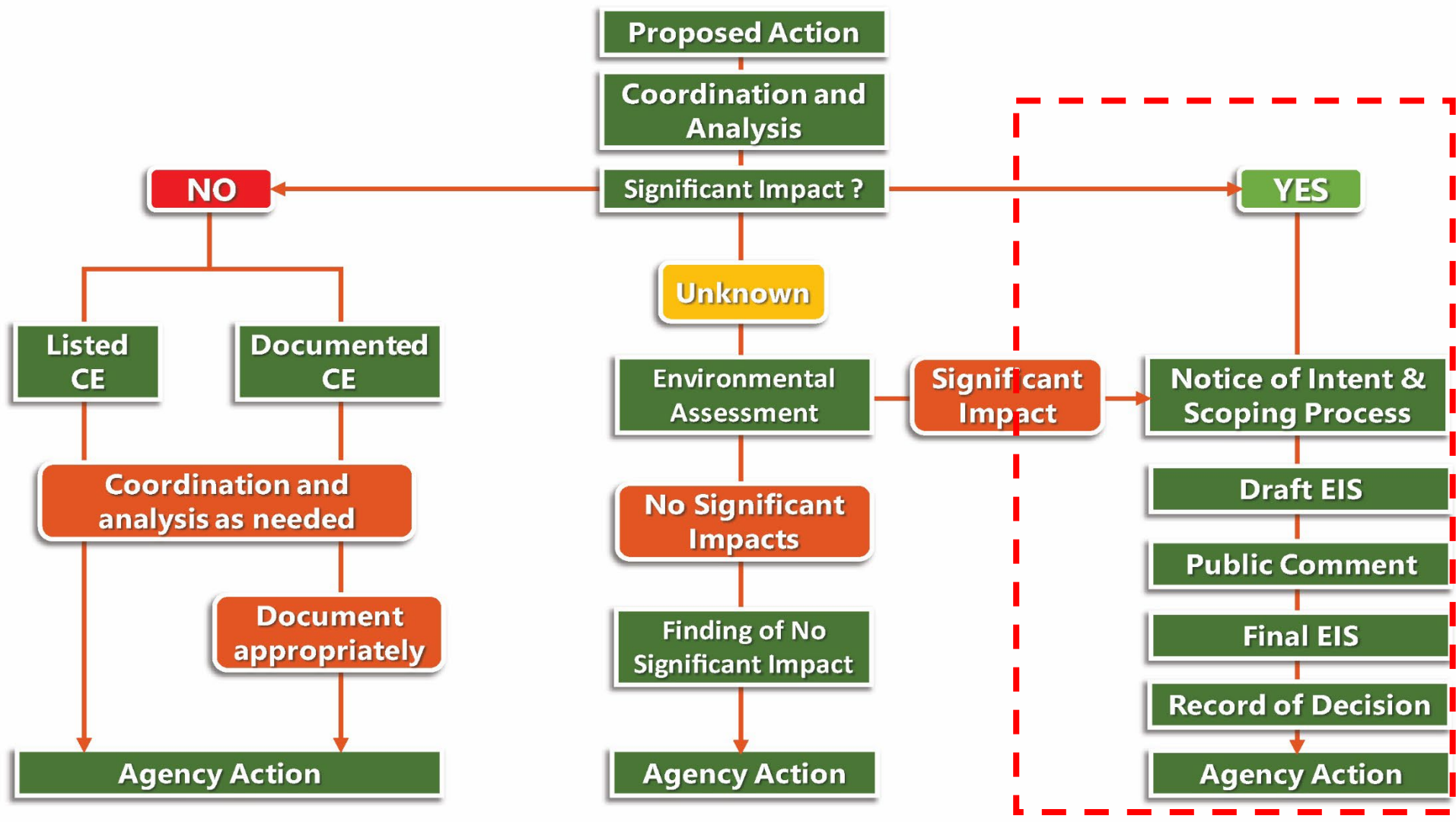
EA Distribution

- Approved by lead agency
- Need not be circulated
- Make available for public review
- Notice of availability **required**
 - published in local newspaper
 - sent to affected / interested agencies
 - sent to state clearinghouse (EO 12372)
- 30 day comment period (normally)

Finding Of No Significant Impact

- Document that briefly presents why the action does not have a significant impact
- Includes and references the EA
- Approved by lead agency
- Need not be circulated
- Notice of availability
 - sent to affected agencies
 - sent to state clearinghouse (EO 12372)
 - published in local newspaper (recommended)
- Available upon request by the public

CEQ Q&A #37A
40 CFR 15.08.13



Environmental Impact Statement

- Environmental impacts of the proposed action
- Unavoidable adverse environmental impacts
- Alternatives to the proposed action
- Irreversible and irretrievable commitments of resources
- Relationship between short term uses and maintenance and enhancement of long term productivity

EIS Process - DEIS

Early Coordination, NOI,
scoping process

Lead agency prepares
DEIS

Lead agency circulates document

EPA – availability
notice in the
Federal Register

Other Agencies
for comment

Make available
for public review
and comment

Receive
Comments

45 day
minimum

Public Hearing

FEIS Process

EIS Recommended Format

- Summary
- Purpose and Need
- Alternatives
- Affected Environment - Existing Setting
 - Social, economic and natural environmental
 - Environmentally Sensitive Features
- Environmental Consequences
- Probable Environmental Impacts and Mitigation
- Comments and coordination

EIS Process - FEIS

DEIS Process



Lead agency prepares EIS

Legal sufficiency review

HQ prior concurrence
(if applicable)

Lead agency prepares EIS

Make available
for public review

Other agencies
for comment

DEIS
commentors

EPA for
notice in the
Federal
Register

30 day
minimum

Receive
Comments

Prepare ROD

Final EIS “Additions”

- Preferred alternative and basis for decision
- Alternatives not preferred and reason why
- Mitigation and enhancement measures
- Major unresolved issues and approach to resolve them
- Coordination, comments, and responses
- Other findings

Legal Sufficiency

- Review
 - Legal requirements have been met
 - Document and process is defensible
 - Document was properly developed
 - Answers questions that can be reasonably asked
 - FEIS discussion is adequate

CEQ Referral Procedure

- When a Federal agency determines the project is environmentally unsatisfactory
- CEQ acts as arbitrator or otherwise rules on the dispute
- Specific time periods are mandated
- Referral must occur within 25 days of FEIS availability notice

Record of Decision

- Incorporate by reference and cross reference FEIS
- Decision - identify selected alternative
- Alternatives considered
 - Discuss values considered and basis of decision
 - Identify “**environmentally preferred**” alternative(s)
- Measures to minimize harm - describe mitigation
- Monitoring or enforcement program included
- Comments on FEIS - substantive comments and responses

Approval of ROD

- No sooner than –
 - 30 days after Federal Register notice (FEIS)
 - 90 days after Federal Register notice (DEIS)
- No further project approvals may be given until ROD is approved
- Make available through public notice
- Consistent with state procedures

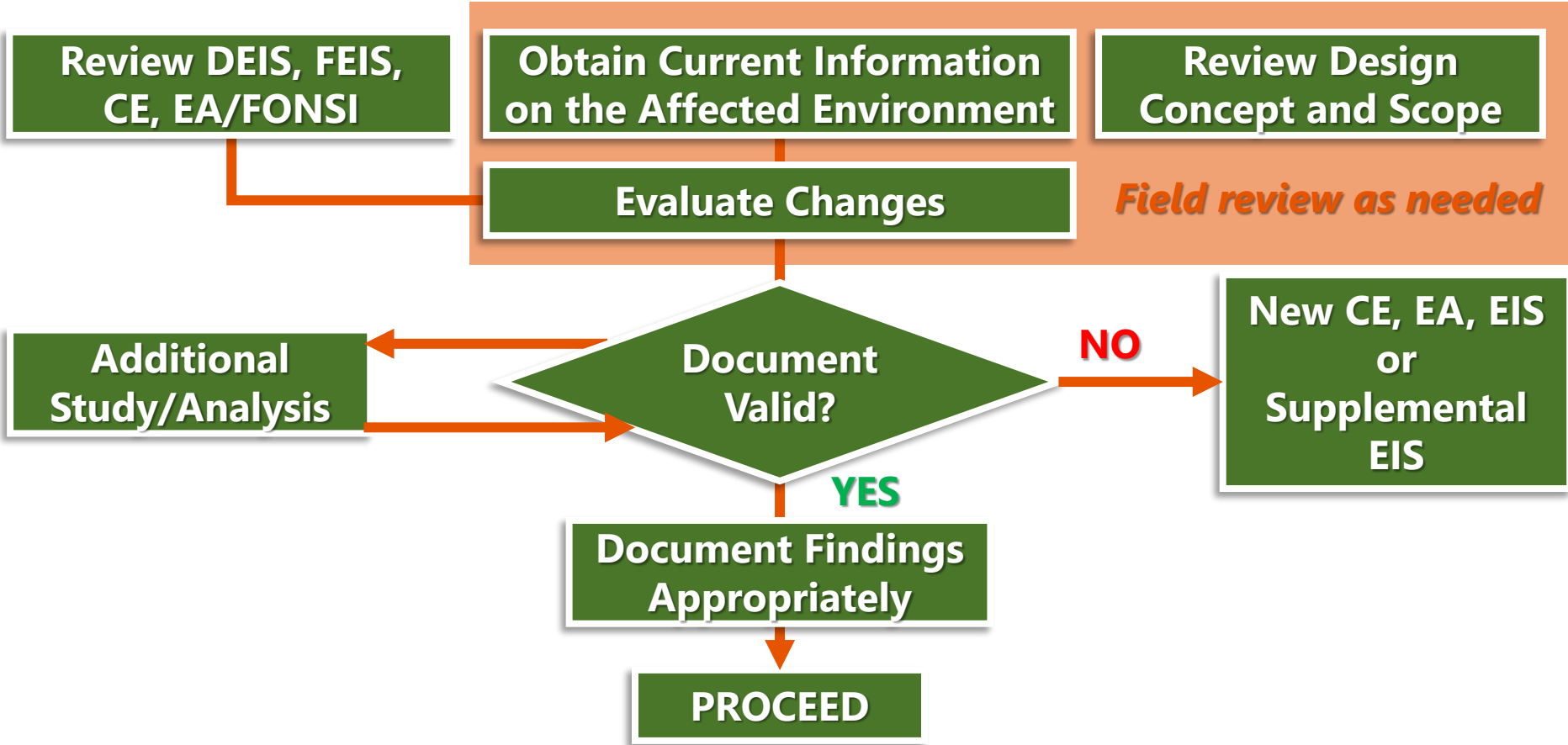
Reevaluation

- Required for all actions that have not progressed
- Timeframes vary
- Establishes whether or not the approved document or NEPA approval remains valid
 - Project design features
 - Affected environment
 - Anticipated impacts and degree of impact
 - Proposed mitigation

Reevaluations

- **Questions that must be answered**
 - Have the conditions of the project changed?
 - Has the setting changed?
 - Has the information presented changed?
 - Is additional investigation appropriate?
 - Is the document still valid?
 - If the information has changed, is agency coordination appropriate?

Reevaluation Process



Supplemental EIS

- **Required** if significant impacts result from changes in proposed action
 - New information or circumstances
- **NOT Required** if changes or new information or circumstances
 - Do not result in previously unidentified significant impacts
 - Reduce adverse environmental impacts without additional new significant impacts



Thank You. Questions?



Gannett Fleming

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