NEPA — the National Environmental Policy Act — is the forgotten elderly relative of environmental law. Its requirement of environmental impact statements is now frequently avoided by a clever workaround. Rather than issuing an environmental impact statement, an agency adopts mitigation measures that are supposed to reduce the legal of environmental impacts below the trigger point — although no one really knows if these measures are successful. Yet, there is much in NEPA to admire.

Forty years ago, NEPA committed the nation to some key goals that not yet been met: fulfilling "the responsibilities of each generation as trustee of the environment for succeeding generations," attaining "the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences," and preserving "important historic, cultural, and natural aspects of our national heritage." Other goals in section 101(b) were assuring safe and healthful surroundings, achieving a balance between population and resource use to permit a high standard of living, enhancing renewable resources and recycling. These goals amounted to a mandate for sustainable development, well before that term had passed into common usage. NEPA § 101(b), 42 U.S.C. § 4331(b).

NEPA expressly required that "to the fullest extent possible," "the policies, regulation, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter." NEPA § 102(1), 42 U.S.C. § 4332(1). By its plain language, this provision mandates that in cases of doubt, statutes be interpreted so as to promote sustainability – although the courts have uniformly ignored this mandate.

In order to achieve its goals, the statue imposed its best known requirement, the mandate for environmental impact statements. But this was only one of several important requirements. The statute also directed all federal agencies to "use a systematic, interdisciplinary approach which will insure the integrated use of the natural and social science and the environmental design arts," not to mention requiring agencies to "recognize the worldwide and long-range character of environmental problems" and where consistent with U.S. foreign policy to "maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment."

These directives fell well short of constituting a detailed roadmap, and perhaps it is not surprising that the courts focused on the relatively specific EIS requirement and virtually ignored the rest of the statute. Thus, the portion of the statute that was most amenable to rigorous legal enforcement received support, but the promise of the remainder of the statute went unfulfilled. Along the way, we lost a possible unifying vision for environmental law.

It remains to be seen whether we can develop a 21st century version of that unifying vision.