NEPA has been weakened by Congress, the White House, and the Supreme Court. It's attacked by both the oil renewables industry. Imagining reform legislation from Congress is difficult, but it's worth imagining, if only as a thought experiment, how we could do better. I would suggest we start by asking what we can expect NEPA to accomplish after fifty years of judicial decisions and agency practice – and whether there are better ways of accomplishing those things.

Basically, my recommendations come down to doing more in the way of larger-scale planning, with more data collection, public participation, and environmental analysis before specific proposals are on the table. We should also push monitoring and mitigation commitments if problems arise during or after construction. The payoff in efficiency terms would be a quicker project for approving individual projects with less less litigation at that stage.

Goal #1: Better informed decisions. Environmental impact statements (and often their shorter siblings, environmental assessments) do give agencies a lot of information. But often this is after the agency has basically made up its mind. What we really need is to have much better information before proposals are even made. Here are two ways of accomplishing this: First, create a National Ecological Survey to provide detailed information about ecosystems across the nation. Among other things, this would allow project planners to pick sites with lower environmental impacts. Programmatic environmental impact statements could be used for these zoning decisions.

Second, require project proponents to conduct environmental surveys of sites before applying so that the agency and the public would have specific information about the site, and provide early opportunities for outsiders to provide additional site-specific information.

Goal #2. Public participation. This should be an independent requirement for permitting. That should include posting of project materials online; the opportunity for public comment; and the public hearings for significant projects. There should be enough lead-time to allow communities time to become informed. Focusing narrowly on NEPA, we should resist efforts to eliminate public participation, something that the Trump Administration is now doing. However, we should structure input in a way that will provide useful information rather than encouraging NIMBYism.

Goal #3: Better planning. NEPA aimed to push agencies into better planning, but

that hasn't worked very well, partly due to adverse court decisions. If we want better plans, we need to be more explicit in imposing planning mandates. I'd suggest that Congress require regional planning efforts by public lands agencies on a regular timetable, building in opportunities for public comment and peer review. Agencies should be required to consider the interconnected nature of environmental issues and the long-term consequences of their programs. Again, programmatic impact statements would offer a good mechanism for this planning projetct.

Goal #4: Project mitigation. We want to give project proponents an incentive to find ways to mitigate impacts. We should just make this a legal requirement for projects and require posting a bond to cover the costs for mitigating any remaining impacts after a project is in operation. Short of that, when project sponsors voluntarily take this step, courts should cut them more slack in reviewing the impact statement.

Goal #5: Making agencies consider the environment. NEPA has made the environment part of every agency's agenda, but courts don't always seem to understand that. We need a clearer mandate for all agencies to provide a reasoned explanation of how environmental factored into their decisions, just as they do for non-environmental policy goals set by Congress. For major projects, we should encourage peer review by independent experts rather than relying entirely on after-the-fact judicial review to improve decisions.

I'm not saying these are the ideal set of recommendations. But I do think the process —focus on your goals and figure out the best way to achieve them — is the right approach to take.