

Gulf Coast Protection District and NEPA Compliance: Working with the “New NEPA”

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In June 2021, Gulf Coast Protection District (GCPD) was formed by the 87th Texas Legislature with the signing of SB 1160.¹ GCPD was formed to be the local sponsor for federal projects proposed by the U.S. Army Corps of Engineers to protect a five-county region in the upper Texas coast. Among other tasks, GCPD must execute contracts for design work and for completion of the environmental impact statements for various components of the Coastal Texas Project.

Under the structure set up by the Corps in August of 2021, the decision was made to approach compliance with the National Environmental Policy Act (NEPA) through the utilization of a tiered environmental impact statement (EIS) process. Although tiered EIS production has been utilized by other federal agencies over the decades of NEPA implementation, this 2021 decision represents the first time that a tiered EIS has been implemented by the Galveston District of the U.S. Army Corps of Engineers² and will likely be new to many environmental lawyers and consultants. One purpose of this paper is to explore this tiered EIS concept.

After the publication of the Coastal Barrer Tiered EIS, NEPA was amended by Congress when it passed the Fiscal Responsibility Act of 2023.³ These changes will affect the implementation work for the Project. Additionally, in April and July 2025, many of the rules of the Council on Environmental Quality (CEQ), the governmental entity responsible for NEPA oversight, were rescinded.⁴ Together, this amendment and subsequent rule changes along with the U.S. Supreme Court case of *Seven County Infrastructure Coalition v. Eagle County Colorado* have substantially changed the face of NEPA compliance.⁵ And on top of these significant changes, there is a push to develop the use of artificial intelligence to

¹ Tex. SB 1160, 87th Leg., Reg. Sess. (Tex. 2021)

² U.S. Army Corps of Engineers, Galveston District, *Coastal Texas Protection and Restoration Feasibility Study: Final Integrated Feasibility Report and Environmental Impact Statement* (August 2021).

³ Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (June 3, 2023).

⁴ Council on Environmental Quality, Rescission of National Environmental Policy Act Implementing Regulations, 91 Fed. Reg. 618 (Jan. 8, 2026)

⁵ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 145 S. Ct. 1497 (2025).

assist in the development of these various environmental impact statements that will be prepared by the District for publication by the Corps.

In the following pages, the proposed coastal barrier will be presented along with the concept of the tiered environmental impact statement that was set in motion with the publication of the first EIS for the Coastal Texas Project. Then, the changes brought by statutory and regulatory amendments as well as the Supreme Court decision will be discussed. And third, the use of an AI-assisted process for developing the EIS will be discussed.

1. The Galveston Bay Barrier System

The U.S. Army Corps of Engineers has proposed a multi-pronged approach to providing protection along the coast. The project is comprised of seven unique features – a dune construction and beach nourishment project, a gate structure that crosses the opening between Galveston Island and the Bolivar Peninsula (Bolivar Roads) where the ferry currently operates, a back-side levee around the City of Galveston, an increase in the height of the current sea wall to 21 feet and fourth, two gate structures within the bay on Dickinson Bayou and Clear Lake, and non-structural proposals for building elevation and floodproofing for the bayside communities. This concept is set out in Figure 1.

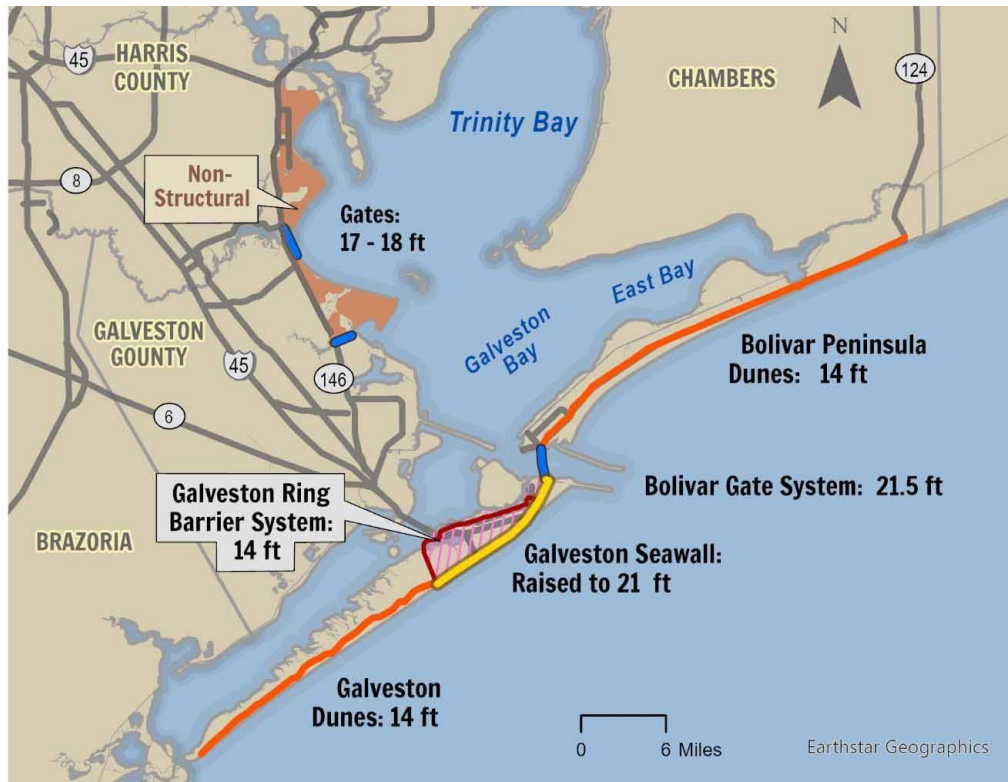


Figure 1. Corps of Engineers proposed coastal barrier system, including dune construction, Galveston seawall raised to 21 feet, backside Galveston levee to 14 feet, Bolivar gate system to 21.5 feet and 2 gates on Dickinson Bayou and Clear Lake to approximately 17 feet plus non-structural controls in cross-hatched areas. Image by Christina Walsh for Jim Blackburn based on Corps of Engineers images.

Under the Coastal Texas Study Final EIS, a tiered EIS system was proposed⁶. This approach has been found to better support disclosure of potential environmental impacts of complex projects such as the Coastal Texas Study. The 2021 Final EIS sets the overall framework for environmental analysis with the subsequent, or Tier Two environmental reviews offering more thorough assessments of impacts and mitigation needed as the project components are refined and more information is available. A diagram of the tiered EIS concept is shown in Figure 2.

⁶ U.S. Army Corps of Engineers, Galveston District, Coastal Texas Protection and Restoration Study, Final Environmental Impact Statement (2021), available at <https://coastaltexasproject.com/documents/>.

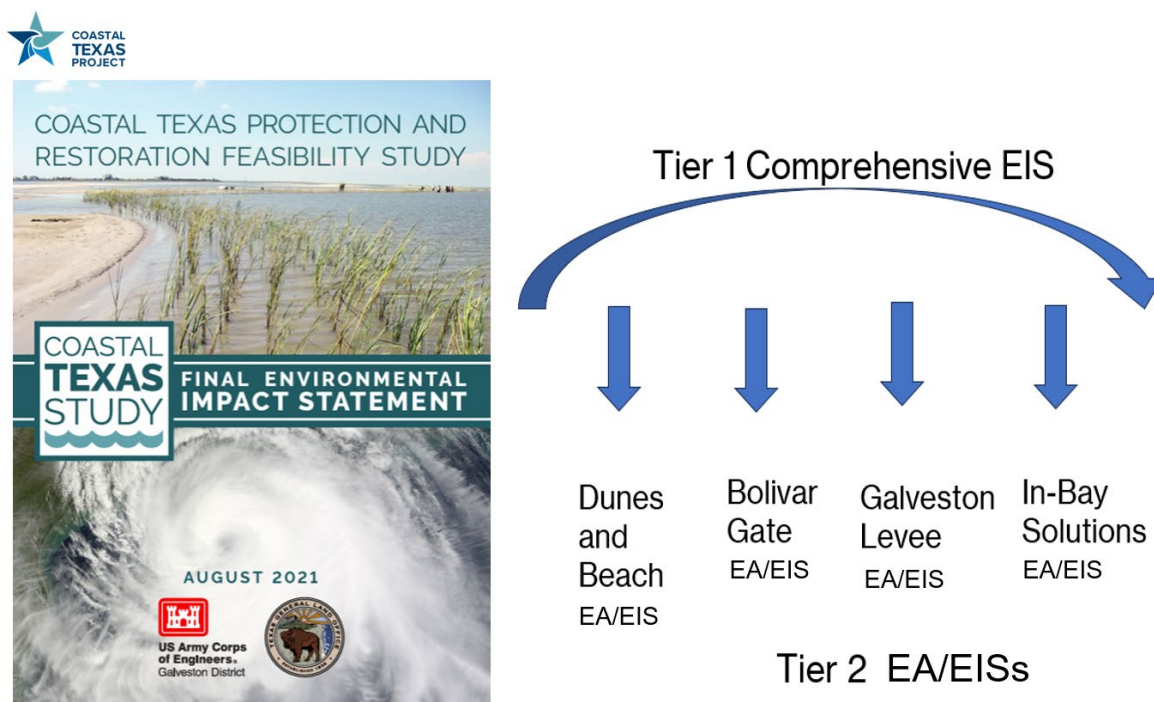


Figure 2. Conceptual diagram of tiered EA/EIS. Image by Jim Blackburn

From a legal standpoint, tiered EISs have been authorized and accepted for some time,⁷ dating back to a Department of the Interior offshore lease sale where the scope of the action – leasing of all offshore lands of the continental United States – was simply too large for a single EIS to cover. In that situation, the first tier considered whether it made sense to lease offshore lands for oil and gas and the second tier considered spatial issues in the various water bodies surrounding the Atlantic, Gulf and Pacific waters as well as the Gulf of Alaska and the Bering Sea. In that case, a third tier was also created to consider individual leases and well permits.

In the case of Galveston Bay, preliminary work is currently under contract for initial engineering design and environmental impact evaluation and feedback. At this stage, formal work has not begun on the Tier 2 EA/EISs with that work expected to begin with the issuance of notices of intent to proceed with EA/EIS preparation by the Corps of Engineers expected in about 18 months.

⁷ 40 C.F.R. Section 1502.20

2. Update on Statutory, Regulatory and Supreme Court Changes to NEPA Implementation

It is important to note that these Tier 2 EA/EISs will be constructed after major changes have been made to NEPA by Congress in 2023, by the Trump Administration in 2025 and by the U.S. Supreme Court in 2025. These changes will certainly influence the content of these EA/EISs as well as the physical size of the document.

a. NEPA Statutory Changes

In 2023, Congress amended the National Environmental Policy Act (NEPA) for the first time in decades with the passage of the Fiscal Responsibility Act of 2023 (Public Law 118-5).⁸ These changes are important for any involved in giving legal advice regarding NEPA compliance.

One major change made by Congress was to redefine the scope of the EIS under Section 102(2)(C)⁹, the cornerstone requirement for NEPA compliance. Here, the wording was changed to introduce the word “reasonable” into the scope of the EIS analysis of impacts and alternatives analysis. In this manner, Congress intended to reduce the scope of both impact analysis and alternative consideration. This thinking was amplified by the Supreme Court in the *Eagle* case described in Section c herein.

Another major change set out by PL 118-5 was the incorporation of both page limits and time limits on the NEPA process along with requirements for reporting any overage in these goals.¹⁰ Most EISs now have a 150-page limit with complex projects being allowed 300 pages. Under this act, a time limit of two years applies from the time of the decision to issue an EIS is made until the Record of Decision is issued.

Yet another change in the NEPA process was included in the Fiscal Responsibility Act of 2023 and involved redefining what constitutes a “major federal action” which is a trigger for the application of NEPA to a project. Here, the definition of

⁸ Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (June 3, 2023).

⁹ National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C), as amended by Pub. L. No. 118-5, § 321, 137 Stat. 10 (2023)

¹⁰ Pub. L. No. 118-5, § 321, 137 Stat. 10 (2023) (codified at 42 U.S.C. § 4336d).

“major federal action” in Section 111 of PL 118-5¹¹ was changed to emphasize that the federal government must have substantial federal control and discretion. That general definition is followed by a list of actions that are not considered to involve “major federal action”.

Lastly, Section 111 of PL 118-5 set forth a requirement that the Council on Environmental Quality, the agency responsible for NEPA compliance, must establish a process for electronic reviews of permits and other NEPA compliance vessels.¹² Of particular interest is the emphasis here on public accessibility and transparency within the NEPA process. This is an interesting new provision that foreshadows the incorporation of a greater use of electronic data systems and artificial intelligence in future NEPA compliance.

b. *Seven County Infrastructure Coalition v. Eagle County* (2025)

Following on the heels of the Fiscal Responsibility Act of 2023, *Seven County Infrastructure Coalition v. Eagle County* (U.S. Supreme Court 2025)¹³ further significantly narrowed the scope of NEPA reviews by limiting the consideration of indirect and cumulative impacts, such as upstream and downstream effects of a project. The decision requires courts to grant agencies greater judicial deference in NEPA cases and emphasizes focusing the analysis on the direct impacts of the project itself.

Background of the case. In this case, the Surface Transportation Board was sued over its approval of a request to build an 88 mile rail line to bring oil from the Uinta Basin in Utah to connect with other rail lines to supply oil to refineries in Texas and Louisiana.¹⁴ Although the STB had written a 3,600 page EIS, the D.C. Circuit Court of Appeals had stopped the project on the grounds that they had not analyzed the effects of projects not directly a part of the proposed federal action such as the increase in oil drilling in the Uinta Basin and/or the impacts on refinery operation on the Gulf Coast. In reversing this decision by a rare 8-0 vote¹⁵, the

¹¹ Pub. L. No. 118-5, § 111, 137 Stat. 10 (2023) (codified at 42 U.S.C. § 4336e).

¹² Pub. L. No. 118-5, § 111, 137 Stat. 10 (2023) (codified at 42 U.S.C. § 4336e).

¹³ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 145 S. Ct. 1497 (2025).

¹⁴ *Eagle Cty. v. Surface Transp. Bd.*, 82 F.4th 1152 (D.C. Cir. 2023), rev'd sub nom. *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025).

¹⁵ *Seven County Infrastructure Coalition*, 145 S. Ct. at 1497.

U.S. Supreme Court significantly modified prior NEPA interpretations of the need to incorporate indirect, secondary and cumulative impacts into a procedurally correct EIS. Importantly in footnote 3, the court noted that although this case dates from before the passage of PL 118-5, the analysis in the Eagle case applies to that law, which the Supreme Court called the Builder Act.

Key takeaways from the Supreme Court's decision. In its decision, the Supreme Court was particularly concerned that NEPA had become something more than initially determined by Congress. As stated early in the decision, NEPA was to “inform agency decision-making, not paralyze it.”¹⁶ In its decision, the Supreme Court focused on two aspects. First, it set out its view of deference that should be afforded to agency actions. And second, the Supreme Court voiced its opinion on the scope of the required analysis. By this case, the Supreme Court was providing a sharp new standard for judicial review of agency actions under NEPA.

The first key finding of the Supreme Court concerned deference by the reviewing court to agency decision-making. Here the Supreme Court held that lower courts must give agencies substantial deference in how they define the factual scope of the analysis. In this regard, the court emphasized that the purpose of NEPA was to analyze the environmental effects of the “proposed” action. As such, this determination of the scope of proposed impacts was delegated to agency discretion under NEPA. Here, according to the Supreme Court, reviewing courts should offer significant deference to agency determinations about issues such as the scope of impacts to be analyzed.

This finding regarding judicial deference was augmented by the second part of the decision where the Supreme Court focused upon the applicable scope of the analysis. According to the Supreme Court,

In analyzing those scope questions, it is critical to disaggregate the agency’s role from the court’s role. So long as the EIS addresses environmental effects from the project at issue, courts should defer to agencies’ decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place

¹⁶ Seven County Infrastructure Coalition, 145 S. Ct. at 1506.

from the project at hand. On those kinds of questions, as this Court has often said, agencies possess discretion and must have broad latitude to draw a “manageable line.” *Public Citizen*, 541 U. S., at 767 (quoting *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U. S. 766, 774, n. 7 (1983)).¹⁷

Ultimately the Supreme Court re-emphasized that NEPA interpretation should be guided by “the rule of reason”.¹⁸

Limited scope of analysis: The Supreme Court’s ruling in the *Eagle* case went beyond simply stating the principle of deference. Indeed, the Court was very clear that the agency should focus on its direct authority over the project and associated impacts, and that the mere presence of “but for” causation was not sufficient to require inclusion of these impacts in an environmental impact statement.

Four terms come into play in this analysis of scope of the EIS. First, there are direct impacts. These are impacts that are directly related to the project’s construction and are totally within the scope of the agency’s discretion as to whether they should occur or not. In the discussion of the facts of the *Eagle* case, there was continuing reference to the impacts of building 88 miles of railway track and the operation of a train over 88 miles.

A second term is indirect impacts. Here, activities associated with the proposed project cause physical modifications that extend beyond the boundaries of the project area. An example used by the court here was stormwater runoff that entered a creek and potentially caused pollution. From the court’s discussion, it seemed clear that they were comfortable with such an analysis of off-site impacts being required to be analyzed due to the physical relationship between the proposal and the impact.

However, there is another type of impact called a “secondary or induced” impact that appears to be no longer within the scope of a required NEPA analysis.

¹⁷ *Seven County Infrastructure Coalition*, 145 S. Ct. at 1511–12 (quoting *Dep’t of Transportation v. Public Citizen*, 541 U.S. 752, 767 (2004); *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 n.7 (1983)).

¹⁸ *Seven County Infrastructure Coalition*, 145 S. Ct. at 1512.

Here, the court specifically stated that the oil field development, which is linked to the rail line by “but for” causation, is not physically part of the proposal, is not physically linked to the proposal and is not within the jurisdiction of the STB to either allow or deny that oil field development. The court did discuss an issue such as approval of ski slope development and the relationship between it and housing development within the ski community, and stated that in such a case, it may be appropriate to include such induced development if it seems to be more closely related to the project “proposal”.

And fourth, there is the issue of cumulative impacts which are never specifically mentioned in the opinion. Cumulative impacts are defined as impacts of the proposed action when considered in light of past, present and reasonably foreseeable future projects. Here, past and present actions undoubtedly would be considered in the context of the description of the existing environment. However, from the language of this decision, it is not clear if reasonably foreseeable future actions are still within the scope of the NEPA EIS, representing a major change in NEPA-required disclosure. This issue will be discussed further in the next section on regulation.

c. Regulatory Changes

On January 20, 2025, President Donald Trump issued Executive Order 14154 titled “Unleashing American Energy”.¹⁹ This far-reaching Executive Order covered many topics, including the repeal of major climate initiatives. In Section 5 of this Executive Order, President Trump revoked Executive Order 11991²⁰ that directed the Council on Environmental Quality (CEQ) to issue regulations implementing the National Environmental Policy Act. Further, EO 14154 directed the head of the CEQ to start proceedings to remove the NEPA implementing regulations previously found at 40 CFR 1500. On January 8, 2026, the CEQ published a final rule rescinding its NEPA implementing regulations.²¹ 2026-00178 (91 FR 618).

¹⁹ Exec. Order No. 14154, Unleashing American Energy, § 5, 90 Fed. Reg. 8353 (Jan. 29, 2025).

²⁰ Exec. Order No. 11991, 42 Fed. Reg. 26967 (May 24, 1977), revoked by Exec. Order No. 14154, § 5, 90 Fed. Reg. 8353 (Jan. 29, 2025).

²¹ Council on Environmental Quality, Rescission of National Environmental Policy Act Implementing Regulations, 91 Fed. Reg. 618 (Jan. 8, 2026)

Once of the effects of this rescission is to remove the CEQ requirements for analyzing indirect, secondary and cumulative impacts in keeping with the Eagle case and Public Law 118-5. In fact, in 2020, the Trump Administration removed the requirement to analyze cumulative impacts²², an action that was overturned by the Biden Administration after facing legal opposition due to long-term NEPA requirements.²³ By removing the CEQ guidance which was considered binding on agencies, the regulatory requirement to analyze cumulative impacts was removed, leaving the extent of cumulative impacts to be analyzed up to individual agencies.

In keeping with the EO 14154, the Eagle Case and the Fiscal Responsibility Act of 2023, the U.S. Army Corps of Engineers rescinded the majority of its NEPA regulations, and instead, for NEPA purposes, is guided by a master set of regulations issued by Department of Defense in an effort to consolidate regulatory policies and thinking.²⁴

In general, the scope of the EIS is to be restricted to the geographic and jurisdictional boundaries of the proposed action. It is also stressed that the entities within DOD have discretion to include a broader analysis. The regulations state:

“If DoD determines that such analysis would assist it in reasoned decision-making, it will document this determination in the [EA or EIS] and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate projects.”

This is not, per se, a rejection of indirect, induced or cumulative impacts but rather leaves substantial discretion to the individual DOD entity. These regulations also adopt the page limits and time limits set out in Public Law 118-5.

3. Utilization of AI-assisted Environmental Impact Statements

In the midst of the major regulatory changes coming from Congress, the Supreme Court and the Trump Administration, AI-assisted environmental impact

²² Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304 (July 16, 2020).

²³ National Environmental Policy Act Implementing Regulations Revisions Phase 2, 88 Fed. Reg. 49924 (July 31, 2023), rescinded by 90 Fed. Reg. 10610 (Feb. 25, 2025).

²⁴ Procedures for Implementing NEPA; Removal, 90 Fed. Reg. 29,461 (July 3, 2025) (codified at 33 C.F.R. pt. 230)

statements will also likely be emerging in the not-too-distant future. The use of electronic portals at the regulatory level was specifically included in Public Law 118-5.²⁵ However, an emphasis on stream-lining the EIS process is at the core of all aspects of these changes. There is clearly dissatisfaction with the delay of the past on the part of all three branches of the federal government. The time for change is now.

There is no doubt that the Trump Administration is on top of this issue. In April 2025, the White House issued a Presidential Paper titled “Updating Permitting Technology for the 21st Century”.²⁶ In this document, the President is clear that agencies are to begin to investigate the use of technology to expedite the agency administrative review process. The document begins as follows:

The Government does not properly leverage technology to effectively and efficiently evaluate environmental permits, causing significant delay to important infrastructure projects that impact our economic well-being. This will now change. My Administration will apply modern technologies to longstanding problems to deliver outstanding results at 21st-century speeds. To that end, and pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. Policy and Purpose. Executive departments and agencies (agencies) shall make maximum use of technology in environmental review and permitting processes for infrastructure projects of all kinds, such as roads, bridges, mines, factories, power plants, and others, to:

- (a) eliminate the use of paper-based application and review processes;
- (b) accelerate the processing time for projects, with little to no impact on quality of review;
- (c) reduce the length and increase the accessibility of documents related to permit applications;

²⁵ Pub. L. No. 118-5, § 111, 137 Stat. 10 (2023) (codified at 42 U.S.C. § 4336e).

²⁶ Presidential Memorandum, Updating Permitting Technology for the 21st Century (Apr. 15, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/04/updating-permitting-technology-for-the-21st-century/>.

- (d) reduce duplicative data submissions;
- (e) increase the interagency use of existing analyses including analyses from other agencies relevant to different permit applications for the same projects;
- (f) eliminate friction in coordination between agencies in the environmental review and permitting processes;
- (g) improve the transparency and predictability of project permitting schedules;
- (h) ensure agency legal departments have the support, funding, and technology to provide the most expeditious and best defense of challenged environmental documents and permit decisions;
- (i) streamline the overall environmental review and permitting process at the Federal level, with the goal of speeding data gathering and decision-making that can improve timeliness for State, local and tribal decision-making as well; and
- (j) maintain a readily available source of information that may be relevant to judicial review of any permits.

Currently, significant activities are beginning to occur that incorporate AI tools into the NEPA compliance process. Initially, the use of AI is being restricted to easier tasks such as reviewing historic documents and processing public comments. It appears that the Department of Energy, with the assistance of Pacific Northwest Laboratories, is taking the lead on these efforts, with agencies such as the Corps of Engineers cooperating in the development of these tools that are being developed.²⁷

In this regard there are several tools that have been and are being developed. One tool is called Search NEPA, which allows past EISs to be reviewed for analyses and conclusions. Two other tools – Chat NEPA for reviewing past decisions and Engage NEPA for compiling public comments – are currently under

²⁷ U.S. Dep't of Energy, Pacific Northwest National Laboratory, PermitAI Project, <https://www.pnnl.gov/projects/permitai>; U.S. Dep't of Energy, Faster, Better Permitting with PermitAI, <https://www.energy.gov/policy/articles/faster-better-permitting-permitai>.

development. This and much more is coming as AI becomes increasingly widespread and effective.

As with any use of AI, there is a continuing need for human oversight. And as the tasks become more complicated, a rigorous process of verification and validation will have to be developed and implemented.

4. Conclusion

Gulf Coast Protection District has quite a challenge ahead of it. At this time, contracts have been issued for the commencement of design work and preliminary environmental data gathering and analysis on both the beach and dune nourishment project and on the design of a very large and complex gate structure that will span Bolivar Roads – the pass between Galveston and the Bolivar Peninsula. Additional work will be forthcoming regarding a proposed levee around the City of Galveston and on in-bay defenses, representing four distinct tiers to be evaluated as per figure 2 above.

It remains to be seen how the analysis of impacts will be conducted given the many changes that have occurred since the issuance of the Final Tier 1 environmental impact statement by the Corps of Engineers in 2021. As has been described in this paper, significant statutory, judicial and executive changes have occurred that arguably change many of the core NEPA issues and concepts. On the other hand, there are representations that have been made in the Tier 1 EIS that must be both understood and respected. In short, there are many important decisions ahead in the development of these Tier 2 EA/EISs.

Here on the Texas coast, the stakes are huge. A major hurricane could destroy a significant portion of the bay community of Galveston and Harris Counties and wreak havoc on the coastal petrochemical complex and container ports. The environmental and economic implications a large surge event are huge. On the other hand, the solutions are very large in scale and very large in cost. The potential environmental impacts of constructing and operating these protective solutions are significant. And public interest, concern and even opposition are high.

NEPA was designed to bring environmental considerations into decision-making and to cause a public discussion of the desirability of proposed actions. It

is clear that NEPA had become more cumbersome than effective, and Congress, the courts and the executive branch have all joined together to indicate that changes are needed in the NEPA process in order for it to succeed in aiding decision-making by the federal government who will ultimately be funding these Texas coastal projects.

Gulf Coast Protection District has begun a design and environmental analytical process intended to bring these competing issues into focus and to set up a process that will keep the public and the governmental agencies fully informed as these issues begin to be better understood and fleshed out. The commitment is to full disclosure as per 50 years of court decisions with the impacts to the bay system fully and fairly analyzed while integrating the new rules and decisions into the process. The next two to three years promise to be interesting as these projects move from design to fully fledged and evaluated proposed actions, each with their own Tier 2, up-to-date environmental impact statement.