KEITH LAUDEMAN,  
Petitioner,  

v.  

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, 
LAND USE REGULATION  
Respondent.  

ADMINISTRATIVE ACTION  
FINAL DECISION  

OAL DKT. NO.: ELU 11439-19  
AGENCY DKT. NO. 0505-04-0013.1  
CZM 180001, WFD 180001  

This Order addresses the appeal by Petitioner Keith Laudeman (Petitioner) of the December 20, 2018 denial by the New Jersey Department of Environmental Protection (DEP) of Petitioner’s request that DEP issue a written determination that proposed activities were exempt from the requirements of the Coastal Zone Management Rules under the Zane Exemption\(^1\) to the Waterfront Development Law, N.J.S.A. 12:5-1 to 11, and DEP’s implementing regulations, and his application for a Coastal General Permit No. 5 (Coastal GP 5), pursuant to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1, et seq., and its implementing regulations. Petitioner sought the Zane Exemption and Permit to construct a single-family residential dwelling on a property he owns in Lower Township, Cape May County.

\(^1\) As discussed further below, the “Zane Exemption” refers to a 1981 amendment to the Waterfront Development Law that exempts certain structures that were in existence prior to the 1981 amendment from obtaining a Waterfront Development Permit in certain circumstances.
On May 8, 2020, Administrative Law Judge Jeffrey R. Wilson (ALJ) issued an Initial Decision holding that the DFP had erred in denying the Zone Exemption, but appropriately denied the Coastal GP 5. After a review of the record before me and for the reasons set forth below, I reject the ALJ’s Initial Decision in part, and adopt the ALJ’s ultimate conclusion that the Permit was properly denied.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner owns the real property at 1284\(^2\) Wilson Drive (Block 763, Lot 13.01) in Lower Township, Cape May County (Property). The Property includes approximately 25 linear feet of frontage along Wilson Drive and is bordered by residential dwellings to the north, east, and west. To the south, the property borders the tidal waters of Schellenger Creek. The Property is situated within the Cape May Bays & Tributaries East Watershed within the greater Cape May Watershed Management Area. As a result of its location, proposed activities located waterward of the mean high water (MHW) line are governed by the Waterfront Development Law, and proposed activities located landward of the MHW line are governed by CAFRA, subjecting any proposed construction to the requirements of the Coastal Zone Management Rules (CZM Rules), N.J.A.C. 7:7-1.1 et seq., which implement the aforementioned laws.

At some point in the past, the Property included a residential structure. At some point between 2007 and 2010, Petitioner removed the structure in its entirety. Petitioner did not commence or effect construction of any nature on the Property at any time thereafter. Aside from a graveled driveway, piles, stringers, and an associated dock, the Property is currently unimproved.

\(^2\) New Jersey property tax records indicate that the property is located at 1284 and not 1285 as indicated in the Initial Decision. Therefore, I modify the facts to reflect the address number as 1284.
Prior to the application that is the subject of this contested case, Petitioner applied to the DEP on two separate occasions for permits under the CZM Rules to construct a single-family residential dwelling occupying the same footprint as the previously existing structure, but with a different architectural design. On December 11, 2005, prior to Petitioner’s removing the structure, DEP granted a Coastal General Permit No. 8, a Waterfront Development Individual Permit, and a Water Quality Certificate for the construction of a 15’ x 55’ single-family dwelling. No construction was initiated during the term of this permit. On February 25, 2013, DEP issued permits for the construction of a single-family dwelling with the same footprint, granting a Coastal General Permit No. 9\(^3\), a Waterfront Individual Permit, and a Water Quality Certificate. In addition to authorizing construction of the single-family home, the 2013 permit legalized an existing 5.5’ x 8’ fixed pier, a 3’ x 16.5’ ramp, and an 8’ x 20’ floating dock. No construction activities were commenced and the permit automatically lapsed after its five-year term on February 24, 2018.

On September 25, 2018, Petitioner requested a written determination that proposed residential construction activities, if undertaken, would be exempt from the requirements of the Waterfront Development Law under the Zane Amendment and submitted another application for a Coastal GP 5. On November 13, 2018, DEP indicated that its preliminary review of the permit application suggested it was unlikely to grant approval because as a matter of law it could not “issue authorization . . . for a structure over water that is not currently existing.” On December 20, 2018, DEP formally denied the permit and Petitioner’s request for a determination that the

\(^3\) Coastal General Permit 8 in 2005 authorized construction of a single-family home or duplex. Coastal General Permit 9 both in 2005 and 2013 authorized reconstruction (with or without expansion) of a single-family home. In 2016, Coastal General Permit 9 was recodified as Coastal General Permit 5. (see 46 N.J.R. 1051(a); 47 N.J.R. 1392(a))
Zane Exemption would apply. Petitioner filed a timely request for an adjudicatory hearing to challenge the DEP’s action.

On August 16, 2019, DEP transmitted the matter to the Office of Administrative Law (OAL) as a contested case. Thereafter, Petitioner and DEP filed cross-motions for summary decision and the matter was fully briefed before the ALJ, who heard oral argument on February 18, 2020.

The ALJ issued an Initial Decision on May 8, 2020, holding that DEP had erred in denying the request for confirmation that the proposed project qualified for the Zane Exemption to the Waterfront Development Law, but had appropriately denied the Permit. The ALJ concluded that the proposed development of the Property on vacant land constituted a “reconstruction” of a building in existence prior to January 1, 1981, therefore qualifying the Property for the Zane Exemption. With reference to Petitioner’s application for a Coastal GP 5, as discussed further below, the ALJ ruled that the three bases cited by the DEP for denial of the application did not preclude the project from being approved under a Coastal GP 5, concluding that the proposed development constituted the reconstruction of “a legally constructed, habitable structure” that did qualify for a general permit if the Petitioner otherwise complied with the requirements of the CZM rules. However, the ALJ ultimately concluded that the proposed development did not comply with Flood Hazard Area Control Act (FHACA) requirements, which compliance is additionally required by the CZM rules. Accordingly, the ALJ concluded that DEP appropriately denied the Permit. As a result, the ALJ denied Petitioner’s motion for summary decision and granted DEP’s cross motion for the same.
Both parties submitted exceptions to the initial decision on May 21, 2020, with dual replies following on May 26, 2020. Petitioner argued that having received permits on two previous occasions, and no physical facts having changed in the interim, DEP was foreclosed from denying his 2018 application as to the Zane Exemption and the Permit, and that its decision to do so was arbitrary and capricious. DEP argued that the Zane Amendment, which by its terms was intended to apply to a “repair” or “renovation”, favors only applicants seeking to reconstruct currently existing structures, making the Zane Exemption unavailable to Petitioner as a matter of law.

DISCUSSION

A. Zane Exemption

The Property is currently empty and contains no structure, residential or otherwise, because Petitioner elected to remove the previous structure in its entirety at some point between 2007 and 2010, leaving the property unimproved and in a “cleared” state. Petitioner now seeks to construct a newly-built residential structure on the Property, with a portion of the structure within an area below the mean high water mark (water area), resulting in the structure’s being subject to N.J.A.C. 7:7-15.2(b)1. Such activities are governed by the CZM Rules, which provide in pertinent part that “[n]ew housing or expansion of existing habitable housing is prohibited in water areas.” N.J.A.C. 7:7-15.2(b)1. Rather than identify the proposed new residence as new construction, Petitioner characterizes his activities as “reconstruction” in order to obtain the regulatory benefit attendant to repairing or renovating structures (or portions thereof) constructed waterward of the MHW line prior to 1981. This benefit is commonly known as the “Zane Exemption.”

4 “Housing” “includes single family detached houses,” N.J.A.C. 7:7-15.2(a), and there is no dispute but that the Property is located in a water area.
Introduced by former Senator Raymond J. Zane in 1981 and codified at N.J.S.A. 12:5-3, the Zane Exemption exempts from the requirements of a Waterfront Development Permit under the Waterfront Development Act:

The repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes[.]

The Zane Exemption is implemented in the CZM Rules at N.J.A.C. 7:7-2.4(d). As pertinent to this case, the regulation exempts “any structure . . . which is in the waterfront area” (N.J.A.C. 7:7-2.4(d)) from compliance with the Waterfront Development Law if, but only if, “[t]he repair, replacement, renovation, or reconstruction [is] in the same location and size . . . of the preexisting structure of any . . . building, legally existing prior to January 1, 1981 . . . provided that the structure is used solely for residential purposes[.]” N.J.A.C. 7:7-2.4(d)(6). In the Initial Decision, the ALJ determined that: (a) “the building in question existed prior to January 1, 1981;” (b) “the proposed size and location will remain unchanged;” and (c) the building “will be used solely for residential purposes.”

The ALJ then turned to the definition of “reconstruction” set forth at N.J.A.C. 7:7-1.5, and concluded that “reconstruction” encompasses the “repair or replacement of a building [or] structure . . . provided that such . . . repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area covered by buildings . . . and does not result in a change in the use of the development.” Based on the ALJ’s view that “[t]here is nothing vague or ambiguous relative to the regulation’s definition of the term ‘reconstruction’;” and that Petitioner “seeks to replace the structure in question,” the ALJ
concluded that DEP “inappropriately denied [Petitioner] a Zane Exemption relative to the Property.”

The Initial Decision effectively redefined the term “reconstruction” to embrace wholly new construction on a vacant, unimproved parcel, thereby extending a statutory exemption from compliance with the Waterfront Development Law, contrary to the DEP’s interpretation of the law, which is entitled to substantial deference. *Univ. Cottage Club of Princeton New Jersey Corp. v. New Jersey Dep’t of Env’t Prot.*, 191 N.J. 38, 48 (2007); *MCG Associates v. New Jersey Dep’t of Env’t Prot.*, 278 N.J. Super. 108, 120 (App. Div. 1994). In short, the ALJ failed to afford substantial deference to the DEP’s conclusion that a structure that does not exist cannot be repaired, replaced, renovated, or reconstructed. By Petitioner’s own admission, any structure existing prior to 1981 had been demolished, no construction occurred on the site under prior DEP authorizations, and no structure existed for several years at the time of the Petitioner’s 2018 application. With no structure presently existing on the parcel, the Petitioner could not have been eligible for the Zane Exemption.

There can be no ambiguity that “repair, replacement or renovation,” N.J.S.A. 12:5-3 (*i.e.*, the Zane Exemption) excludes “new construction.” Where no ambiguity is present, the DEP’s interpretation of the statute is conclusive. *MCG Associates*, 278 N.J. Super. at 119. Even if the Waterfront Development Law or CZM regulations were ambiguous, the principle of statutory construction, *noscitur a sociis* (“a word is known by the company it keeps”), requires the result reached in this Final Decision. *Noscitur a sociis* is a well-recognized doctrine in New Jersey jurisprudence. See, e.g., *Isetts v. Borough of Roseland*, 364 N.J. Super. 247, 257 (App. Div. 2003). The doctrine “is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the [term in question].” *Jarecki v. G.D. Searle & Co.*, 367 U.S.
303, 307 (1961). According to the doctrine, where two or more words are associated together, they should take their meaning from one another. *Ibid.* When the words take their color from and are qualified by each other, the meaning of the general words is restricted to the sense analogous to that of the less general. *Isetts*, 364 N.J. Super. at 257.

The term “reconstruction” must be read in context of the terms with which it is associated, specifically, “repair, replacement or renovation,” which are the operative words of the Zane Exemption as codified at N.J.S.A. 12:5-3 and which are embodied in the operative language set forth in N.J.A.C. 7:7-2.4(d)(6) (“repair, replacement, renovation”), as well as the definitional language of N.J.A.C. 7:7-1.5 (“reconstruction” means “repair or replacement”). These associated terms suggest reparative and restorative activities. Based on these associations, it is clear the intention of the provision is that “reconstruction” refers to reparative and restorative activities because the meaning can be determined in reference to the color of the other words in the legislation and regulation.

The undisputed facts of record, admitted by Petitioner, establish that Petitioner seeks to undertake new construction, not reparative or restorative reconstruction, the latter of which is the intent of the DEP regulations implementing the Zane Exemption. As Petitioner conceded, “[h]e removed the previous structure sometime between 2007 and 2010, but never commenced …” subsequent building activities. (See Petitioner’s Exceptions dated May 21, 2020, paragraph 4). The minimum eight-year gap between Petitioner’s voluntary removal of the preexisting Zane-eligible structure and his 2018 permit application precludes DEP from considering this wholly new construction as the type of repair or replacement intended to be exempt from compliance with the Waterfront Development Law.
Under the circumstances here, to conflate Petitioner’s regulated activities with potentially exempt “repair, replacement or renovation” would erroneously equate wholly new construction with the reparative and restorative activities intended by the plain language of the Zane Exemption and its implementing regulations, thereby violating the doctrine of *noscitur a sociis* by giving the term “reconstruction” exactly the sort of “unintended breadth” that the doctrine is designed to avoid. *Jarecki, supra*, 367 U.S. at 307.

The legislative history of the Zane Exemption supports this conclusion. Reviewing the Act on November 12, 1981, Governor Byrne stated, “I agree with the content of this bill that repairs to *existing waterfront structures* be freed from a burdensome regulatory process and I am convinced that no damage to the environment will result.” Governor’s Veto Statement to S. 3231 (November 12, 1981). However, the Act also exempted from permitting “the new construction of floating docks,” which caused the Governor to conditionally veto the measure on the ground that “new construction” “should continue to be reviewed by the Department of Environmental Protection.”

The juxtaposition of “repairs,” on the one hand, against “new construction,” on the other, required the Legislature to remove “construction” from the Act before it could become law, and fully supports DEP’s conclusion that the construction contemplated by Petitioner is not within the ambit of the Zane Exemption. As Governor Byrne emphasized, the Zane Exemption embraces repairs and other reparative activities such as replacement or renovation of an existing structure, but excludes actual construction not associated with repair, replacement, or renovation of existing structures, whether of floating docks or otherwise.

The conclusion that the amendment was intended to apply only to reparative activities to structures is further supported by the Sponsor’s Statement to Senate Bill 3231 (1981) even prior to Governor Byrne’s conditional veto, which resulted in removal of the term “construction” from
the bill with reference to floating docks. Particularly, the Sponsor’s Statement specifies that “The bill provides an exemption from State approval where the repair or renovation is of a permanent dock or other structure existing prior to January 1, 1981 ...” (emphasis added). Sponsor’s Statement to S. 3231 (L. 1981, c. 315).

In summary, it being clear that the Zane Exemption was not intended to allow new construction in water areas to escape regulatory review, it is DEP’s conclusion that the Zane Exemption must have limited application to those otherwise regulated activities that are intended to repair or replace currently existing structures in water areas where the original construction of the subject structure predates the legislative amendment that created the exemption. As indicated above, N.J.A.C. 7:7-15.2(b)(1) provides, in pertinent part, “New housing ... is prohibited in water areas.” The parties acknowledge that the Property is located in a water area. Based on the above, I find that it is inconsistent with the meaning of the term “reconstruction” as used in DEP’s regulations to consider the proposed new construction in these circumstances as qualifying as a reconstruction. Therefore, I find that DEP appropriately denied Petitioner’s request that it issue a written determination in accordance with N.J.A.C. 7:7-2.4 that proposed activities were exempt from the requirements of this chapter under the Zane Exemption to the Waterfront Development Law.

B. COASTAL GENERAL PERMIT NO. 5

As indicated above, because the proposed structure includes portions both landward of the MHW line of Schellenger Creek and waterward of the MHW line, the proposed new construction also requires CAFRA approval for the upland portion of the project. Because Petitioner has failed to meet the requirements for a Coastal GP 5 under DEP’s CZM Rules that implement CAFRA, the necessary authorization was denied. While ultimately concluding that DEP’s denial was
appropriate because the proposed construction does not comply with the FHACA as required by the CZM Rules at N.J.A.C. 7:7-6.5(c), the ALJ also concluded that DEP’s denial under other CZM requirements applicable to requested general permit was improper.

Particularly, based on his analysis of the term “reconstruction” as discussed above, the ALJ first ruled that Coastal GP 5 does not preclude reconstruction of a pre-existing structure that no longer exists. The ALJ next ruled that, because he had found that the proposed project should have been found to qualify for a Zane Exemption, the limitation that prohibits a project partially over water from qualifying for a Coastal GP 5 without having obtained a Waterfront Development Permit or Zane exemption was inapplicable since the Zane Exemption should have been granted. Finally, the ALJ rejected DEP’s finding that the proposed project did not qualify for a Coastal GP 5 because it did not propose the reconstruction of a “legally existing, habitable structure.” Pointing to the regulatory language that specifies that the general permit authorizes the reconstruction of a “legally constructed, habitable” structure, the ALJ determined that the general permit’s requirement in this regard had been satisfied because it was undisputed that the original structure had been legally constructed, and that habitability had been established because the structure that had been on the Property somewhere from 8 to 11 years prior to the 2018 permit application, as well as the theoretical new structure, were habitable.

In summary, the ALJ concluded that (1) reconstruction of a structure that no longer exists qualifies to receive approval under a Coastal GP 5; (2) it was irrelevant that the dwelling would be located partially over water because a Zane Exemption should have been granted; and (3) habitability was established because the previously removed structure had been habitable and the proposed structure was also planned to be habitable.
For the following reasons, I reject the ALJ’s Initial Decision with regard to conclusions (1) through (3), above, I adopt the Initial Decision with regard to the ALJ’s conclusion that DEP’s denial of the Permit was appropriate based on its evaluation of the Flood Hazard Area Control Act Rules, and I find that DEP appropriately denied the Permit as well to the extent such denial was based on its application of the defined terms “reconstruction” and “habitable” and its denial of a Zane Exemption.

I address each of the ALJ’s four conclusions in turn.

The law pertinent to the issuance of the Permit is set forth at N.J.A.C. 7:7-6.5(a), which, in relevant part, reads as follows:

“This general permit authorizes the expansion, or reconstruction (with or without expansion), of a legally constructed, habitable single-family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, and clearing, excluding shore protection structures), provided the single-family home or duplex and accessory structures are located landward of the mean high water line, and provided the single-family home or duplex is not located on a bulkheaded lagoon lot.”

In accordance with this provision, a Coastal GP 5 may authorize only the expansion or reconstruction of a habitable single-family dwelling. Consistent with its determination in denying applicability of the Zane Exemption, DEP determined the proposed project did not fall within the meaning of the term “reconstruction,” and accordingly could not be authorized under General Permit No. 5. As a result, it denied the Permit application in part based on that determination.

The ALJ held that DEP’s determination was not proper. Particularly, based upon his analysis of the term “reconstruction” as discussed above, the ALJ concluded that a structure that no longer exists can nonetheless be reconstructed. However, as discussed above, this conclusion was erroneous.
As with the applicability of the Zane Exemption to the Waterfront Development Law, the determination of whether a proposed activity qualifies for a Coastal GP 5 in part rests upon whether the proposed activity constitutes “reconstruction,” as that term is defined at N.J.A.C. 7:7-1.5. Reconstruction under the CZM rules is similarly limited to reparative and restorative activities on existing structures. While the proposed activity here may be approvable under the CZM rules at a parcel with an existing structure, the minimum 8-year gap between removal of the preexisting structure and Petitioner’s application seeking approval for new construction does not meet the requirements for issuance of a Coastal GP 5.

In addition to the finding that the proposed activity did not qualify for a Coastal GP 5 because it did not constitute reconstruction as that term is defined in the CZM rules, DEP denied the permit application based upon the location of the proposed activity relative to the MHW line of Schellenger Creek. Among its other limitations, N.J.A.C. 7:7-6.5(a) authorizes reconstruction of a structure provided the structure is located landward of the MHW line. Here, Petitioner seeks to construct partially waterward of the MHW line. To do so would require that Petitioner obtain either a Waterfront Development Permit or a Zane Exemption. Based on his conclusion that a Zane Exemption should have been granted, the ALJ concluded that DEP was not precluded from granting the Permit. However, for the reasons set forth above, I conclude that the requirements of a Zane Exemption have not been met. Accordingly, I find that, in the absence of the proposed activity qualifying for a Zane Exemption or having obtained a Waterfront Development Permit, neither of which was present here, the activity does not qualify for approval under a Coastal GP 5.

With reference to the ALJ’s third conclusion, the CZM rules at N.J.A.C. 7:7-6.5(a) further require that construction authorized under a Coastal GP 5 pertain to a structure that is both “legally constructed” and “habitable.” In the Initial Decision, the ALJ turned to the definition of
“habitable” at N.J.A.C. 7:7-1.5, which states that “[h]abitable with reference to structures or development means a structure or development that has been or could have been legally occupied in the most recent five-year period.” Concluding that it is undisputed the demolished structure was a habitable, single-family dwelling (as would be the proposed structure), the ALJ concluded that habitability has been established. As a result, the ALJ found that the Permit should not have been denied on the basis of failure to satisfy this requirement.

Regardless of whether both the historic structure and the proposed new structure were dwellings capable of habitation, the ALJ’s analysis and his resulting conclusion failed to account for the full definition of “habitable” in accordance with DEP regulations. Particularly, as indicated above, in order to be considered to be habitable the structure must have been or could have been legally occupied “in the most recent five-year period.” Under the facts of this case, as summarized in the Initial Decision, it is undisputed that the habitable structure necessary to qualify for a Coastal GP 5 was not present within the timeframe that would have been necessary for Petitioner to qualify for this general permit. As Petitioner explicitly represented, the previous structure ceased to exist sometime between 2007 and 2010. To quote Petitioner’s submission on the point: “Prior to January 1, 1981, the Property included a single family dwelling. The Petitioner removed the structure sometime between 2007 and 2010. . . .” By definition, therefore, and in contravention of N.J.A.C. 7:7-1.5, as well as the intent of Coastal GP 5 that this permit only be applicable to address the repair or replacement of an existing structure, the structure that Petitioner removed from the Property a minimum of eight years prior to the application which is the subject of this proceeding could not have been legally occupied in the most recent five-year period prior to application. Application of the complete definition of habitability as set forth in N.J.A.C. 7:7-1.5 to the undisputed facts in this case leads to only one conclusion: both at the time of DEP’s decision and
at the time of Petitioner’s application, the requisite habitable structure necessary to be considered for approval under a Coastal GP 5 did not exist. Accordingly, DEP’s denial on this basis was not only an appropriate exercise of its discretion under the rules, but was also the only possible determination that could be arrived at under the explicit terms of the applicable rules.

Finally, the ALJ analyzed DEP’s Flood Hazard Area Control Act (FHACA) Rules to determine if denial of the permit based on failure to comply with those rules, as specifically required under the CZM rules, was appropriate. The ALJ determined that the Property is within a flood hazard area pursuant to N.J.A.C. 7:7-9.25(a); that development proposed in a flood hazard area must comply with the FHACA and its regulations pursuant to N.J.A.C. 7:7-9.25(b)(1); and that the proposed property – as Petitioner acknowledged – did not comply with such regulations because it did not have a finished floor located one foot or more above the flood elevation⁵, which in this case is 10.3 feet, as required by N.J.A.C. 7:13-12.5(i)(1). Accordingly, the ALJ found that DEP’s denial of the permit application for failure to satisfy the FHACA Rule’s requirements, as required by the CZM Rules, was appropriate. While not part of his ruling, the ALJ noted in the Initial Decision that there was some indication that other issues were indicated to be present in addition to the floor elevation concerns under the FHACA Rules. The ALJ appropriately did not make any findings with reference to those other issues, which are not part of the current matter.

I agree with the ALJ’s conclusion that DEP appropriately denied the Permit. However, I find that DEP properly denied the Permit based on its application of the defined terms “reconstruction” and “habitable,” and its denial of a Zane Exemption.⁶

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⁵ It is noted that, while the Initial Decision referred generally to the “flood elevation,” finished floor elevations under the FHACA Rules are established in relation to the “flood hazard area design flood elevation,” which is defined at N.J.A.C. 7:13-1.2.

⁶ In light of the disposition of this matter, Petitioner retains the option of electing to apply for a Coastal General Permit No. 4 pursuant to N.J.A.C. 7:7-6.4. A Coastal General Permit No. 4 authorizes development of a single-family home
CONCLUSION

For the reasons set forth above, I ADOPT the Initial Decision granting summary decision on cross-motion in favor of DEP and denying Petitioner's motion for summary decision. However, I REJECT the Initial Decision as to the interpretation of the terms "reconstruction" and "habitable", as well as to DEP's denial of a Zane Exemption, as discussed above. I ADOPT the Initial Decision with regard to the conclusion that DEP properly denied the Permit. In conclusion, because Petitioner's proposed activity constitutes new construction, not reconstruction of a habitable structure, DEP's denial of the requested Zane Exemption and Permit is affirmed.

IT IS SO ORDERED.

Dated: September 1, 2021

Shawn M. LaTourette, Commissioner
NJ Department of Environmental Protection

or duplex under the conditions set forth therein, including the condition that the home is located landward of the mean high water line as specified in N.J.A.C. 7:7-6.4(a).
SERVICE LIST

KEITH LAUDEMAN, Petitioner,

v.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,
LAND USE REGULATION, Respondent.
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