

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

June 18, 2015

The Honorable Jana E. Shealy
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia SC 29201

REMITTITUR

Re: Ann Dreher v. SCDHEC
Lower Court Case No. 2010AL0700222
Appellate Case No. 2013-000364

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: Christopher M. Holmes, Esquire
Bradley David Churdar, Esquire
Amy Elizabeth Armstrong, Esquire

The Supreme Court of South Carolina

Ann Dreher, Respondent,

v.


South Carolina Department of Health and Environmental
Control, Petitioner.

Appellate Case No. 2013-000364

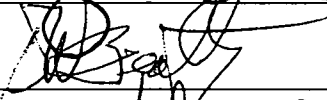
Lower Court Case No. 2008-AL-07425CC

ORDER

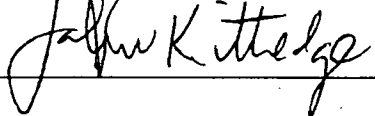
The Petition for Rehearing filed in the above entitled matter is denied.



C.J.

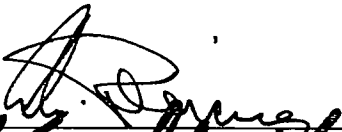


J.




J.

I would grant rehearing.



J.



J.

Columbia, South Carolina

June 18, 2015

cc: Christopher M. Holmes, Esquire
Bradley David Churdar, Esquire
Amy Elizabeth Armstrong, Esquire
Jana E. Shealy

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Ann Dreher, Respondent,

v.

South Carolina Department of Health and Environmental
Control, Petitioner.

Appellate Case No. 2013-000364

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From The Administrative Law Court
Ralph King Anderson III, Administrative Law Judge

Opinion No. 27507
Heard November 18, 2014 – Filed March 18, 2015

AFFIRMED AS MODIFIED

Bradley David Churdar, of N. Charleston, for Petitioner.

Christopher McG. Holmes, of Mt. Pleasant, for
Respondent.

CHIEF JUSTICE TOAL: We granted the South Carolina Department of Health and Environmental Control's (DHEC) petition for a writ of certiorari to review the court of appeals' decision in *Dreher v. South Carolina Department of Health and Environmental Control*, 399 S.C. 259, 730 S.E.2d 922 (Ct. App. 2012),

reversing the Administrative Law Court's (ALC) denial of Ann Dreher's (Respondent) bridge construction permit application. We affirm as modified.

FACTS/PROCEDURAL BACKGROUND

In January 1994, Respondent purchased two parcels of property located on Folly Island, South Carolina: 806 East Cooper Avenue, and Tract D. These lots were previously a contiguous tract of high ground property in which the Tract D portion abutted the ocean, and the Cooper Avenue portion abutted the roadway. However, at some point prior to Respondent's property purchase, two man-made canals were constructed, after which Tract D became completely surrounded by coastal tidelands and waters. At present, 806 East Cooper Avenue is approximately 0.24 acres in size, and Tract D is approximately 0.84 acres in size.

On April 2, 2009, Respondent filed a permit application with DHEC requesting permission to construct a vehicular bridge from 806 East Cooper Avenue to Tract D. DHEC denied the application because Regulation 30-12(N)(2)(c) prohibits the agency from issuing a bridge construction permit to a "coastal island" less than two acres in size, and the parties agreed that—if Tract D was, in fact, a "coastal island"—it did not meet the regulation's minimum size requirement. *See* S.C. Code Ann. Regs. 30-12(N)(2)(c) (2011).¹

Respondent requested a contested case hearing before the ALC. At the hearing, the parties focused on whether Tract D met the definition of a "coastal

¹ Regulation 30-12(N)(2) specifically states:

- (a) The decision on whether to issue or deny a permit for a bridge to a coastal island must be made with due consideration of the impacts to the public trust lands, critical area, coastal tidelands and coastal waters, weighed against the reasonable expectations of the owner of the coastal island. Giving due consideration to these factors, [DHEC] has determined that some islands are too small or too far from upland to warrant the impacts on public resources of bridges to these islands, and thus no permit for a bridge shall be issued.

- (c) [DHEC] will not consider applications for bridge access to islands less than two acres in size.

island" as described in the Coastal Zone Management Act (CZMA) and the regulations promulgated pursuant to the CZMA. *See generally* S.C. Code Ann. §§ 48-39-10 to -360 (2008 & Supp. 2014); S.C. Code Ann. Regs. 30-1 to -21 (2011 & Supp. 2014). A "coastal island" is defined as:

an area of high ground above the critical area delineation that is separated from other high ground areas by coastal tidelands or waters. An island connected to the mainland or other island only by a causeway is also considered a coastal island. The purpose of this definition is to include all islands except those that are essentially mainland, i.e., those that already have publicly accessible bridges and/or causeways. ***The following islands shall not be deemed a coastal island subject to this section due to their large size and developed nature:*** Waites Island in Horry County; Pawleys Island in Georgetown County; Isle of Palms, Sullivans Island, ***Folly Island***, Kiawah Island, Seabrook Island, Edisto Island, Johns Island, James Island, Woodville Island, Slannn Island and Wadmalaw Island in Charleston County; Daniel Island in Berkeley County; Edisto Beach in Colleton County; Harbor Island, Hunting Island, Fripp Island, Hilton Head Island, St. Helena Island, Port Royal Island, Ladies Island, Spring Island and Parris Island in Beaufort County.

S.C. Code Ann. Regs. 30-1(D)(11) (emphasis added). Because the listed islands are not considered "coastal islands," properties on these islands are exempt from the minimum acreage requirement found in Regulation 30-12(N)(2)(c). *See* S.C. Code Ann. Regs. 30-12(N)(2)(a), (c) (restricting eligibility for a bridge-building permit to those coastal islands that are large enough to warrant the impact on public resources).

Ultimately, the ALC found Tract D "geologically, geographically and by legal description, is on and within the boundaries of Folly Island."² Nonetheless, the ALC concluded that Tract D constituted a "coastal island" separate and apart from Folly Island.³ Therefore, the ALC upheld DHEC's denial of Respondent's

² Similarly, the ALC found that "[t]he proposed bridge was the least environmentally damaging alternative for access to Tract D and, in fact, would have de minimus environmental impact."

³ The ALC based this conclusion on four reasons. First, the ALC found that Tract D was "an area of high ground about the critical area that is separated from other

bridge permit application, finding that "Tract D is less than one acre in size," and that "the legislative intent, as evidenced by the language of Regulation 30-1(D)(11) and the policies of the CZMA, was to include islands like Tract D in Regulation 30-1(D)(11)'s definition of 'coastal island.'"⁴

Respondent appealed to the court of appeals, and the court of appeals reversed the ALC's decision. *See Dreher*, 399 S.C. at 261, 730 S.E.2d at 923. Specifically, the court of appeals found that because DHEC "failed to challenge" the ALC's finding that Tract D was part of Folly Island, that finding became the law of the case. *Id.* at 263, 730 S.E.2d at 924. The court of appeals considered this fact dispositive, as Folly Island—and thus Tract D—were specifically exempt from the minimum acreage requirement for a bridge-building permit. *See id.* at 264–65, 730 S.E.2d at 925. In the alternative, the court of appeals ruled that on the merits, substantial evidence in the record demonstrated that Tract D was part of Folly Island, and thus was exempt from the minimum acreage requirement found in Regulation 30-12(N)(2)(c). *Id.* at 263–64, 730 S.E.2d at 924–25. Finally, the court of appeals held that because Respondent was not prohibited from building a bridge due to Tract D's small size, she was entitled to construct the bridge by virtue of Regulation 30-12(F). *Id.* at 266, 730 S.E.2d at 925–26; *see also* S.C. Code Ann. Regs. 30-12(F) (requiring DHEC to weigh the environmental impact of proposed bridges against public safety considerations, and to approve projects that have a

high ground areas by coastal tidelands or waters," and thus technically met the definition of a "coastal island." Second, the ALC determined that unlike the other exempt islands listed in Regulation 30-1(D)(11), Tract D was not "essentially mainland," and thus the General Assembly did not intend to exempt Tract D from the minimum acreage requirement found in Regulation 30-12(N)(2)(c). Third, the ALC similarly concluded that the General Assembly did not intend to include parcels such as Tract D in the list of exempt coastal islands because unlike the other named islands, Tract D was not "large [in] size and developed [in] nature." Finally, the ALC found that building the bridge to Tract D would require building in a tidelands area, which the CZMA specifically sought to protect.

⁴ Both parties filed timely motions to reconsider. Of note, DHEC requested the ALC reconsider its finding that Tract D "geologically, geographically and by legal description, is on and within the boundaries of Folly Island," arguing that the finding was inconsistent with the remainder of the ALC's conclusions. Because the ALC did not rule on either party's motion within thirty days, the motions were deemed denied.

minimal environmental impact).

We granted DHEC's petition for a writ of certiorari to review the court of appeals' decision.

ISSUES

- I. Whether the court of appeals misapplied the law of the case doctrine?
- II. Whether Tract D is exempt from the minimum acreage requirement found in Regulation 30-12(N)(2)(c)?

STANDARD OF REVIEW

Appellate courts review cases decided by the ALC in accordance with the Administrative Procedures Act. *Engaging & Guarding Laurens Cnty.'s Env't (EAGLE) v. S.C. Dep't of Health & Env'tl. Control*, 407 S.C. 334, 341, 755 S.E.2d 444, 448 (2014) (citing S.C. Code Ann. § 1-23-610(B) (Supp. 2012)). Thus we are limited "to determining whether the ALC's findings were supported by substantial evidence or were controlled by an error of law." *Id.* An appellate court may not substitute its judgment for the judgment of the ALC as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-610(B). "In determining whether the [ALC's] decision was supported by substantial evidence, this Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion that the [ALC] reached." *Hill v. S.C. Dep't of Health & Env'tl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010).

ANALYSIS

I. *Law of the Case Doctrine*

"An unappealed ruling is the law of the case and requires affirmance." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). Thus, should the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings—whether correct or not—become the law of the case. *Cf. Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating . . . , [*inter alia*,] matters that were [] not raised on

appeal, but should have been . . .").⁵

Moreover, because an appellate court may affirm the lower court's decision for any reason appearing in the record, the prevailing party may—but is not required to—raise additional sustaining grounds to support the lower court's decision. *See* Rule 220(c), SCACR; *see also I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 420, 526 S.E.2d 716, 722, 723 (2000) ("In raising an additional sustaining ground in an appeal, the party who prevailed in the lower court urges an appellate court to affirm the lower court's ruling for a reason other than one primarily relied upon by the lower court."). Thus, "it is not necessary for the party who prevailed below to object to or appeal from the trial court's ruling in order to raise such grounds." *I'On*, 338 S.C. at 418, 526 S.E.2d at 722.

Here, the court of appeals found that DHEC—the prevailing party before the ALC—should have secured a ruling from the ALC reversing its finding that Tract D was "geologically, geographically and by legal description, [] on and within the boundaries of Folly Island," and that because DHEC failed to do so, this finding became the law of the case. However, the court of appeals misapprehended the law of the case doctrine. Specifically, the court of appeals erred in applying the doctrine so as to bar the prevailing party below from raising an additional sustaining ground. DHEC properly raised its challenge to the ALC's finding in its brief to the court of appeals, and thus did not concede or abandon the argument. *See id.* at 420, 526 S.E.2d at 723. Therefore, rather than find the argument procedurally barred, the court of appeals should have considered whether Tract D is a "coastal island" as defined in the regulations.

II. Coastal Island Exemption

DHEC asserts that because Tract D is surrounded by coastal tidelands and waters, it is a "coastal island" under Regulation 30-1(D)(11). Further, DHEC argues that Tract D essentially ceased to be a part of Folly Island as a result of the creation of the man-made canals that separate Tract D from 806 East Cooper Avenue. In contrast, Respondent does not dispute that Tract D is surrounded by coastal tidelands and waters, but rather contends that because Tract D remains within the geographical and legal boundaries of Folly Island, it is expressly exempt

⁵ To the extent an appellate court relies on the law of the case doctrine, the appellate decision affirms the lower court's decision procedurally, rather than on the merits.

from being considered a "coastal island." As the ALC aptly expressed, "This decision [] centers on whether the legislature intended that its declaration of Folly Island as [exempt from the general definition of a 'coastal island'] overrides its declaration that a coastal island is simply high ground which is 'separated from other high ground areas by coastal tidelands or waters.'" In other words, the issue here is purely an issue of regulatory interpretation.

Generally, "[a] specific statutory provision prevails over a more general one." *Wooten ex rel. Wooten v. S.C. Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999); *see also Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control*, 350 S.C. 39, 47–48, 564 S.E.2d 341, 346 (Ct. App. 2002) (employing the rules of statutory construction to discern the meaning of a regulation). Here, Regulation 30-1(D)(11) broadly defines "coastal islands," but then specifically exempts certain islands, including Folly Island, from the general definition. *See* S.C. Code Ann. Regs. 30-1(D)(11). Further, the ALC found that Tract D was "on and within" Folly Island, and as detailed in the court of appeals' opinion, that finding is supported by substantial evidence in the record. *See Dreher*, 399 S.C. at 263–64, 730 S.E.2d at 924–25 (outlining the facts in the record demonstrating that Tract D is part of Folly Island). As such, we agree with Respondent that Tract D is not a "coastal island" in and of itself; rather, it is part of Folly Island, which is specifically exempted in the regulation.

Accordingly, the specific regulatory exemption for Folly Island controls over the more general regulatory definition of "coastal island." As a result, Tract D cannot be considered a "coastal island," and the minimum acreage requirement found in Regulation 30-12(N)(2)(c) does not bar Respondent's bridge construction permit application. In conjunction with Regulation 30-12(F) and the ALC's finding that "[t]he proposed bridge was the least environmentally damaging alternative for access to Tract D and, in fact, would have de minimus environmental impact," we find that DHEC and the ALC erred in denying Respondent's permit application. *Cf.* S.C. Code Ann. Regs. 30-12(F) (outlining the environmental impact standards DHEC should consider prior to granting a bridge-building permit).

CONCLUSION

For the foregoing reasons, we affirm the result reached by the court of appeals, albeit through different reasoning.

AFFIRMED AS MODIFIED.

**KITTREDGE and BEATTY, JJ., concur. PLEICONES, J.,
concurring in part and dissenting in part in a separate opinion in which
HEARN, J., concurs.**

JUSTICE PLEICONES: I concur in part and dissent in part. I agree with the majority that the Court of Appeals misapplied the law of the case doctrine. I disagree, however, with the majority's decision to uphold the Court of Appeals' reversal of the ALC's denial of respondent's permit request.

The majority acknowledges that whether Tract D is entitled to share Folly Island's coastal island exemption found in S.C. Code Ann. Regs. 30-1(D)(11) (2011) is a question of fact, which is reviewed under the substantial evidence standard. While the majority views the factual issue as whether Tract D is a "part" of Folly Island or "on and within" that island, in my view the question is whether there is substantial evidence to support the ALC's finding that the tract is itself a coastal island. Whether a parcel located within the geographic boundaries of a named island is itself a separate coastal island within the meaning of Reg. 30-1(D)(11), or whether it is not and therefore shares the named island's exemption, is a question of fact. *Risher v. S.C. Dep't of Health & Env'tl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 434 (2011) ("whether or not the Lot is part of Fripp Island is not a legal question that is determined under the rubric of a regulation; instead, it is a finding of fact properly left within the purview of the fact finding body, and only reversible if unsupported by substantial evidence").

In *Risher*, we found substantial evidence supported the ALC's findings that the lot located within the geographic boundaries of Fripp Island did not meet the definition of coastal island under the regulation, and that it was therefore within Fripp's exemption. Here, as all parties admit, Tract D is entirely surrounded by "coastal tidelands or waters" and is therefore a coastal island as defined by Reg. 30-1(D)(11). The ALC's finding that Tract D is not within Folly Island's exemption is supported by substantial evidence. *Risher, supra*. In my opinion, the Court of Appeals erred in reversing the ALC, and the majority also errs by focusing on Tract D's location rather than on its topography. *Id.*

Even if the majority's view prevails, and the ALC's decision finding Tract D to be a coastal island is reversed, it does not follow that respondent is automatically entitled to the bridge permit she seeks. Instead, the matter should be remanded to DHEC for consideration of the permit request in light of the requirements of S.C. Code Ann. Regs. 30-12(F) (2011), an issue which has not yet been litigated.

For the reasons given above, I concur in part and dissent in part.

HEARN, J., concurs.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ann Dreher, Appellant,

v.

South Carolina Department of Health and Environmental
Control, Respondent.

Appellate Case No. 2010-181586

Appeal From Richland County
Ralph K. Anderson, III, Administrative Law Judge

Opinion No. 5011
Heard May 23, 2012 – Filed July 25, 2012

REVERSED

Christopher McG. Holmes, of the Law Offices of
Christopher McG. Holmes, of Mt. Pleasant; and Leslie S.
Riley, of McNair Law Firm, PA, of Charleston, for
Appellant.

Carlisle Roberts, Jr. and Davis A. Whitfield-Cargile,
both of South Carolina Department of Health and
Environmental Control, of Columbia, for Respondent.

WILLIAMS, J.: Ann Dreher (Dreher) appeals the final order of the Administrative Law Court (ALC) affirming the denial of her application to construct a bridge to property she owns on Folly Island, South Carolina, based on the ALC's finding that her property is a coastal island subject to regulatory restrictions. In addition, Dreher asserts a permit should have been issued because

she demonstrated *de minimus* environmental impact from the proposed bridge construction. We reverse.

FACTS/PROCEDURAL HISTORY

Dreher is the record owner of two parcels of property located on Folly Island.¹ The first parcel of land, designated as 806 East Cooper Avenue, consists of .2409 acres. The second parcel, identified as "Tract D," contains .8434 acres of upland high ground (the buildable portion) and the remainder, which surrounds the buildable portion, is comprised of coastal tidelands and waters. Tract D commences at the southeast corner of lot 809 East Cooper Avenue and extends to the edges of the marsh of Folly River and then approximately 290 feet to the west and back to the eastern line of 805 East Cooper Avenue and then back to the starting point at lot 809. It is undisputed that 806 East Cooper Avenue and Tract D were previously a contiguous tract of high ground property. Prior to Dreher's purchase of the parcels, two man-made canals were constructed resulting in Tract D being completely surrounded by coastal tidelands and waters.

On April 2, 2009, Dreher submitted an application to the South Carolina Department of Health and Environmental Control (DHEC), requesting a permit to construct a 9 feet x 51 feet vehicular bridge originating at 806 East Cooper Avenue and across the tidal canal to Tract D. DHEC denied Dreher's application because Regulation 30-12(N)(2)(c) (the Small Islands Regulation) prohibits DHEC from issuing a permit for the construction of a bridge to a coastal island that is less than two acres in size. 23A S.C. Code Ann. Regs. 30-12(N)(2)(c) (Supp. 2011) ("The Department will not consider applications for bridge access to islands less than two acres in size."). The Board of Health and Environmental Control (Board) declined to conduct a final review conference on the matter, and Dreher filed a written request for a contested hearing with the ALC. Following a hearing on July 13, 2010, the ALC issued a Final Order and Decision (the Order) on October 19, 2010, and both parties timely filed motions to reconsider. The ALC did not issue a ruling

¹ The title abstract for Dreher's property demonstrates that her title derives from an original grant on November 8, 1918, to Folly Island Company of a tract described as "the 'Folly Islands' or more commonly known collectively as 'Folly Island,' being bounded on the East by the Atlantic Ocean, on the South by the channel of Stono Inlet, on the West by the channel of Folly River and Folly Creek and on the North by the channel of 'Lighthouse Inlet.'"

on either party's motions and, by rule, they were deemed denied after thirty days. This appeal followed.

STANDARD OF REVIEW

The Administrative Procedures Act establishes this court's standard of review for cases decided by the ALC. This court will only reverse the ALC's decision if it is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2011). Furthermore, "[t]he court may not substitute its judgment for the judgment of the administrative law [court] as to the weight of the evidence on questions of fact." *Id.*

LAW/ANALYSIS

I. Folly Island

Dreher contends the ALC erred in concluding Tract D is subject to the Small Islands Regulation because Folly Island is expressly excluded by the General Assembly's definition of coastal island. We agree.

As an initial matter, we note the ALC's finding of fact that Tract D is a part of Folly Island is the law of the case. DHEC initially filed a motion to reconsider this particular finding by the ALC, stating "[t]he [c]ourt's finding that 'notwithstanding the man-made excavation, Petitioner's property, geologically, geographically, and

by legal description, is on and within the boundaries of Folly Island' is inconsistent with the evidence presented and misleading in light of the court's correct legal conclusions." Despite DHEC's attempt to correct this alleged inconsistency in the Order, the ALC did not rule on the motion and DHEC failed to challenge the ALC's finding on appeal; therefore, the finding that Tract D is a part of Folly Island is the law of the case. *See, e.g., Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct. App. 1999) (holding a lower court's finding was the law of the case because respondent failed to cross appeal the issue).

Even if the ALC's finding that Tract D is a part of Folly Island is not the law of the case, we find there is substantial evidence in the record to support the ALC's finding of fact that Dreher's property "geologically, geographically, and by legal description, is on and within the boundaries of Folly Island." At the hearing, Dreher presented expert testimony establishing that Tract D is geologically and geographically part of Folly Island. Dr. Eric Poplin ("Dr. Poplin") and Dr. Allen Kem Fronabarger ("Dr. Fronabarger") both testified Tract D was part of a "dune ridge" that formed on the back side of Folly Island as a result of aeolian deposition of sand. In addition, this "dune ridge" is graphically depicted as early as 1825 on a survey prepared by the Department of the Army and on subsequent aerial photographs as late as 1949. Furthermore, Dr. Poplin testified he conducted shovel tests of the soils on 806 East Cooper and Tract D that demonstrated there are no differences in their composition and that they appear to be from the same land form.

Dreher also presented substantial evidence to support the ALC's finding that Tract D is on and within the legal boundaries of Folly Island. The title abstract for Tract D states that Dreher's title derives from a grant made on November 8, 1918, to Folly Island Company of a tract described as "the 'Folly Islands' or more commonly known collectively as 'Folly Island,' being bounded on the East by the Atlantic Ocean, on the South by the channel of Stono Inlet, on the west by the channel of Folly River and Folly Creek and on the North by the channel of Lighthouse Inlet." Attached to the deed is a plat recorded on December 9, 1895, showing the property described in the grant. Accordingly, Tract D is included both in the metes and bounds of the 1918 deed and within the surveyed boundaries of

the 1895 plat. Based on Dreher's deed and subsequent chain of title, Tract D is, by legal description, on and a part of Folly Island.²

Therefore, the ALC's finding of fact that Tract D is "geologically, geographically, and by legal description, on and within the boundaries of Folly Island" is a reasonable conclusion supported by substantial evidence based on the expert testimony and title evidence presented at the hearing. *See Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 434 (2011) ("The court's determination of whether or not the Lot is a part of Fripp Island is not a legal question that is determined under the rubric of a regulation; instead, it is a finding of fact properly left within the purview of the fact finding body, and only reversible if unsupported by substantial evidence in the record."); *Burse v. S.C. Dep't of Health & Envtl. Control*, 369 S.C. 176, 188-89, 631 S.E.2d 899, 906 (2006) (stating when conflicting evidence exists as to an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder).

II. Plain Language of the Regulation

Next, Dreher contends the ALC erred in determining Tract D was a coastal island because the court relied exclusively on the first sentence of the regulatory definition of coastal island to the exclusion of the subsequent language of the regulation. We agree.

Regulation 30-1(D)(11) defines coastal island as "an area of high ground above the critical area delineation that is separated from other high ground areas by coastal tidelands or waters." 23A S.C. Code Ann. Regs. 30-1(D)(11) (Supp. 2011). Here, there is no dispute that Tract D is a coastal island as defined in the regulations because Dreher concedes Tract D is a high ground area above the critical line delineation separated from the upland immediately adjacent to 806 East Cooper Avenue by navigable, saline waters. However, the regulation further provides, in pertinent part, that:

The purpose of this definition is to include all islands
except those that are essentially mainland, i.e., those that

² The property description found in the eight subsequent deeds, including the grant to Dreher in 1994, is identical to the original grant to the Folly Island Company in 1918.

already have publicly accessible bridges and/or causeways. The following islands shall not be deemed a coastal island subject to this section due to their large size and developed nature: . . . Folly Island

Id.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). A statute should be read as a whole. *Id.* Further, "[s]tatutes which are part of the same legislative scheme should be read together." *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 84, 529 S.E.2d 6, 8 (2000). "Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning." *Mid-State Auto*, 324 S.C. at 69, 476 S.E.2d at 692. "The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose." *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005).

Although Tract D satisfies the definition of a coastal island in the first sentence of Regulation 30-1(D)(11) as it is "an area of high ground above the critical area delineation that is separated from other high ground areas by coastal tidelands or waters," the regulation further provides for certain exclusions, stating the coastal island definition does not apply to Folly Island. *See* § 30-1(D)(11). Based upon the ALC's finding that Tract D is a part of Folly Island, we find the regulation, when read in its entirety, supports a finding that Tract D is exempt from the definition of coastal island and thereby exempt from the Small Islands Regulation. Therefore, the ALC erred in concluding Tract D was not exempt from the definition of coastal island under Regulation 30-1(D)(11).

III. *De Minimus* Impact

Dreher contends if the Small Island Regulations do not apply to Tract D, she is in compliance with 23A S.C. Code Ann. Regs. 30-12(F) (Supp. 2011) (the Transportation Regulation), and the bridge permit should be granted. We agree.

Although DHEC initially filed a motion to reconsider the ALC's finding that "the proposed bridge was the least environmentally damaging alternative for access to

Tract D and, in fact, would have de minimus environmental impact," DHEC failed to challenge the ALC's finding on appeal. Accordingly, the ALC's finding is the law of the case. *See Commercial Credit Loans*, 334 S.C. at 187, 512 S.E.2d at 129 (holding a lower court's finding was the law of the case because respondent failed to cross appeal the issue).

Notwithstanding the law of the case, there is substantial evidence to support the ALC's finding that the proposed bridge complied with the Transportation Regulation. The Transportation Regulation provides, in pertinent part, "the location and design of public and private transportation projects must avoid the critical areas to the maximum extent feasible. Where coastal waters and tidelands cannot be avoided, bridging rather than filling of these areas will be required to the maximum extent feasible." *See* § 30-12(F)(2)(b). Because Dreher cannot avoid the waters and tidelands, her permit application proposes minimal construction of a bridge to span the critical area to reach Tract D. Dreher's application also states that the cumulative impacts to the environment and surrounding areas would be minimal and that the proposed bridge represents "the least damaging and most practicable alternative for accomplishing the project." Accordingly, we find there is substantial evidence to support the ALC's finding that Dreher's permit application complied with the criteria of the Transportation Regulation. *See Se. Res. Recovery, Inc. v. Dep't of Health & Envtl. Control*, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004) ("Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.").

CONCLUSION

It is the law of the case that Dreher's property is geologically, geographically, and by legal description on, and a part of, Folly Island. Folly Island is specifically exempted from the Small Islands Regulation, and as a result, it was error for the ALC to affirm DHEC's denial of Dreher's permit to build a bridge to Tract D. We further conclude the finding that Dreher's permit application to access Tract D complies with the Transportation Regulation is the law of the case. Accordingly, the order of the ALC is

REVERSED.

THOMAS and LOCKEMY, JJ., concur.