

Pennsylvania Office of Attorney General Attn: ACRE 15th Floor, Strawberry Square
Harrisburg, PA 17120

Email: ACRE@attorneygeneral.gov

Re: Request for Review under the Agriculture, Communities and Rural Environment (ACRE) Law (Act 38 of 2005) – East Union Township Ordinance No. 7-31-2026-003 Establishing 5-Ton Vehicle Weight Limits on Phineyville Road (T-875) and Other Township Roads

Dear ACRE Review Team:

I am writing as an owner/operator of agricultural property, and on behalf of the broader agricultural users of Phineyville Road, to formally request that the Office of the Attorney General review, under the Agriculture, Communities and Rural Environment (ACRE) Law (Act 38 of 2005), East Union Township Ordinance No. 7-31-2026-003.

This request is submitted pursuant to the process described on the Attorney General's ACRE page. ACRE authorizes the Attorney General to review and, if necessary, challenge local ordinances that unlawfully restrict normal agricultural operations or that exceed, duplicate, or conflict with state law.

The Ordinance at Issue

On or about July 31, 2026, the East Union Township Board of Supervisors enacted **Ordinance No. 7-31-2026-003**, titled:

“AN ORDINANCE OF EAST UNION TOWNSHIP, SCHUYLKILL COUNTY, PENNSYLVANIA, AMENDING CHAPTER 13, VEHICLES AND TRAFFIC, SECTION 205, VEHICLE WEIGHT LIMITS ESTABLISHED ON CERTAIN STREETS.”

The ordinance amends Chapter 13 (Traffic & Motor Vehicles), Part 2 (Traffic Regulations), §205 (Vehicle Weight Limits Established) of the Township's Codification of Ordinances by adding the following weight limits:

Township Road (Beginning to end) Weight Limit (tons)

Cemetery Road (T-854)	5
West Pine Street (T-855)	5
West Market Street (T-857)	5
Brandon Street (T-865)	5

Township Road (Beginning to end) Weight Limit (tons)

Oak Street (T-868) 5

Phineyville Rd. (T-875) 5

Cranberry Alley 5

The ordinance states that it takes effect five business days from its adoption and that, except as amended, §205 remains the same. It relies on authority under Section 4902(a) of the Pennsylvania Vehicle Code.

A copy of Ordinance No. 7-31-2026-003 and the relevant portions of the Township's existing Chapter 13 Traffic Codification (including §205 and the road-name attachments) are enclosed/attached.

This ordinance is based on the May 5, 2026 Engineering and Traffic Study prepared by Alfred Benesch & Company (Project No. 0326-609017.02).

The Property, Active Farms, and Agricultural Context

Phineyville Road (T-875) is the primary access road for multiple active farms in East Union Township. These working agricultural operations regularly use the road for the movement of farm equipment, trucks, livestock trailers, feed, fertilizer, crops, and other materials essential to normal agricultural operations.

One of the affected properties is the approximately 100-acre Austra property located at 129 Phineyville Road. The property spans both sides of Phineyville Road and is agricultural in character and use. Access for ordinary agricultural operations, equipment movement, maintenance, and related activities depends on this road.

A permanent 5-ton weight limit on Phineyville Road therefore directly restricts multiple active farms that rely on it for day-to-day operations.

Objection – Why This Constitutes an Unauthorized Local Ordinance

1. **Restriction on Access to Normal Agricultural Operations** A permanent 5-ton weight limit on Phineyville Road prohibits or severely limits the movement of standard agricultural equipment, trucks, and vehicles commonly used by the several active farms that depend on this road. This restricts the ability of farm owners and operators to conduct normal agricultural operations. ACRE protects against local ordinances that prohibit or limit normal agricultural operations unless

the local government has clear authority under state law and the ordinance is not otherwise preempted or unauthorized.

2. **Inadequate Supporting Engineering and Traffic Study under State Law** 75 Pa.C.S. § 4902(a) permits local weight restrictions only when supported by a proper engineering and traffic study conducted in accordance with Department regulations. The May 5, 2026 Benesch letter is a high-level, qualitative field-observation narrative that applies generic findings across multiple roads. It lacks the quantitative elements contemplated by PennDOT Publications 46, 212, and 221 and Form TE-109 (detailed pavement structural analysis, measured geometric data, traffic volumes, site-specific stopping-sight-distance calculations, etc.). An ordinance resting on an insufficient study exceeds or conflicts with the requirements of the Vehicle Code and implementing regulations.
3. **Conflict with Local-Traffic Exemptions and the State Posting Framework** Pennsylvania law (67 Pa. Code Chapter 189 and related guidance, including Pub. 221) provides local-traffic exemptions for vehicles traveling to or from destinations on or reachable only via the posted road, including residences, commercial establishments, and farms. Traffic necessary for the active farms and agricultural operations along Phineyville Road falls squarely within these state-law protections. An ordinance or enforcement practice that ignores or effectively nullifies these exemptions for agricultural traffic is unauthorized.
4. **Broader Context of Overreach** The ordinance was enacted shortly after the Township specifically authorized a road study that included Phineyville Road and received the Benesch recommendation. ACRE exists to prevent local governments from using ordinances (including road weight restrictions) to unreasonably impede legitimate agricultural and rural land uses that are protected or regulated at the state level.

Requested Action

I respectfully request that the Office of Attorney General:

- Accept this matter for ACRE review;
- Determine whether East Union Township Ordinance No. 7-31-2026-003 (specifically the 5-ton restriction on Phineyville Road (T-875) and the related amendments to Chapter 13, §205) constitutes an “unauthorized local ordinance” under Act 38 of 2005;

- Investigate the sufficiency of the supporting May 5, 2026 Benesch Engineering and Traffic Study under 75 Pa.C.S. § 4902 and Department regulations; and
- Take such further action as the Attorney General deems appropriate, including seeking to invalidate or enjoin the ordinance if it is found unauthorized.

I am prepared to provide any additional documentation, including the full Benesch study package, property records demonstrating agricultural use and ownership, identification of the active farms that use Phineyville Road, correspondence with the Township, photographs of current road conditions, and evidence of the practical impact on access and operations.

Thank you for your attention to this matter. Please confirm receipt and advise of any additional information needed.

Respectfully submitted,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Owner/Operator – [REDACTED] property, East Union Township, Schuylkill County

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

September 18, 2026

VIA EMAIL [REDACTED]

Jeffrey Mozdziok, Esquire
Deputy Attorney General
Office of Attorney General
1600 Arch Street, Suite 300
Philadelphia, PA 19103

Re: East Union Township, Schuylkill County — ACRE Request of [REDACTED]
Phineyville Road (T-875); Ordinance No. 7-31-2026-003, Supplement to File

Dear Deputy Attorney General Mozdziok:

We write to supplement our ACRE request in light of East Union Township's September 18, 2026 response and the enclosed May 5, 2026 Benesch letter that the Township now treats as its Engineering and Traffic Study. We ask the Office to keep the review open. The Township's filing does not establish that the five-ton, year-round posting on Phineyville Road is a lawful restriction of a normal agricultural operation. It does confirm that ordinary farm access to [REDACTED] remains local traffic unless and until the Township follows 67 Pa. Code § 189.3

I. What the Township has now conceded

The Township's letter is useful because it records several points that should govern this review

First, the Township assumes, for this matter, that the agricultural activities described in the complaint are normal agricultural operations. That places the ordinance within ACRE 3 Pa.C.S. §§ 312–314

Second, the Township has not made a determination under 67 Pa. Code § 189.3(b) that particular farm vehicles or destinations are likely to damage Phineyville Road. It has not given the required notice to vehicle registrants, destination owners, or police. It has not installed deterrent signage and states that it has taken no enforcement action.

Third, qualifying trips to or from the agricultural property at [REDACTED], including farm machinery, supply deliveries, agricultural pickups, and movement between farm areas on opposite sides of the road—"may use the exemption." Local traffic status is based on the trip and destination, not on the operator's occupation or a five-ton number.

Fourth, qualifying local traffic does not first need an overweight permit or bond merely to receive the exemption. If permitting later applies, 75 Pa.C.S. § 4902(c)(1) still forbids refusal of a permit on a § 4902(a) highway when no reasonable alternate route is available.

Fifth, the Township agrees that the local-traffic exemption cannot cure an otherwise unsupported general posting, that Chapter 13, § 205 must operate subject to 75 Pa C S. § 4902(f) and (f 1), and that a study does not excuse noncompliant signs.

Those concessions matter. They mean the Township is not claiming a right to stop overweight farm access on Phineyville Road as of today. Any later attempt to treat the posting as a total ban, to demand a bond for ordinary farm trips, or to cite local agricultural traffic without § 189.3 notice would be inconsistent with the position the Township just gave this Office.

II. The Benesch letter is not the study the Vehicle Code and PennDOT manuals describe

The Township asks the Office to treat the May 5, 2026 Benesch correspondence as “the substantive basis” for a permanent five-ton restriction on seven roads. We have now reviewed that document. It is a three-page narrative, nine photographs, and a location map. It is signed by a professional engineer. It is not a blank file. It is also not an Engineering and Traffic Study of the kind PennDOT requires before a municipality posts a highway.

75 Pa.C.S. § 4902(a)(1) permits a local weight restriction only after an engineering and traffic study conducted as provided in Department regulations. 67 Pa. Code § 212.1 defines that study as an orderly examination or analysis of physical features and traffic conditions. Publication 23, Chapter 15, and Publication 46 direct posting authorities to document highway-condition restrictions on Form TE-109. Publication 221 tells municipalities to conduct the study, then consider a seasonal posting or alternate routes, then adopt an ordinance, give public notice, contact known hauling users, notify police, and erect signs. LTAP guidance lists geometric review, past breakup history, pavement analysis, and traffic volume as the ordinary contents of the study.

The Benesch letter contains none of the following:

- Form TE-109, or any equivalent data sheet,

- measured pavement thickness, cores, or structural capacity;

- traffic counts, ADT, or equivalent loading;

- measured lane width, shoulder width, curve radius, or stopping sight distance;

- crash history;

- a road-by-road findings table,

- any explanation why five tons, rather than eight or ten, is the warranted threshold;

- any explanation why a year-round posting is required rather than a seasonal restriction, which Publication 221 expressly tells municipalities to consider, or

- any discussion of existing farm use of Phineyville Road, local traffic, or the absence of a reasonable alternate route to [REDACTED]

What the letter does contain is a single set of “common conditions” applied to seven different facilities: short village streets in Sheppton and Brandonville, a narrow stone alley (Cranberry Alley), and Phineyville Road, a multi-mile rural township road. The same five-ton, full-length recommendation is then issued for all of them. The Township’s response admits that the report “does not represent that every listed defect occurs at every point on every road,” and that it contains no cores, counts, measured geometry, or sight-distance calculations.

Engineering judgment is authorized by 67 Pa. Code § 212.117(b). Judgment is not a substitute for identifying the road, the condition, and the reason a particular number is required. “Limited apparent pavement thickness” is a visual impression. “Not designed for heavy loading” is a conclusion without a design typical or a measured section. Photo 9 is captioned “Typical Lack of Adequate Sight Distance,” but the photograph is a shoulder drop-off; no sight-distance measurement appears anywhere in the packet.

Phineyville Road photographs (Photos 7–9) show cracking, rutting, and edge deterioration. Those conditions can support maintenance. They do not, standing alone, explain a permanent five-ton ceiling on a farm road that is the access to a working agricultural property. A loaded tractor, implement combination, feed delivery, or lime truck routinely exceeds 10,000 pounds. The study never grapples with that fact.

III. The study argues safety; the Township tells this Office the posting is only § 4902(a)

The Benesch letter states that its purpose is “to determine safe weight limits.” It spends substantial space on stopping sight distance, narrow lanes, curvature, maneuverability, and “a clear and ongoing risk to public safety.” Those are § 4902(b) themes.

The Township’s September 18 letter tells this Office the opposite. It says the ordinance rests on § 4902(a) road-condition authority, and it “does not ask the Office to treat safety observations as a substitute for those findings or to reclassify the ordinance under § 4902(b) in order to avoid the governing local traffic rules.”

The Township cannot have both. If this is a § 4902(a) posting, the study’s safety narrative does not supply the missing structural analysis, and Chapter 189 local traffic applies. If the Township is in fact relying on safety to justify a five-ton ban on farm equipment, it should say so, because that is a different statute with different consequences for agricultural access. Mixing the two in the engineer’s letter, then disclaiming the mix in the solicitor’s letter, is not a complete engineering and traffic study.

IV. ACRE review is not limited to the face of the schedule

The Township asks the Office to decline “outright invalidation based simply on the five-ton threshold, its nonseasonal character, or its impact on vehicles used in agriculture.” That is not the request. The request is review of an ordinance that limits a normal agricultural operation by posting the only practical access road at a weight that ordinary farm equipment exceeds, on a record that does not justify that number for that road.

3 Pa. C.S. § 313(c) preserves municipal authority that actually exists. It does not preserve a posting that was not supported in the manner § 4902(a) and Department regulations require. Section 4901(b) forbids local alteration of statewide size and weight limits except where this title expressly grants authority. Section 4902(f) and (f)(1) require regulatory compliance and prohibit inconsistent local provisions. Silence in Chapter 13, § 205 does not repeal Chapter 189.

The Township cites this Office’s June 8, 2018 North Coventry review. That letter is the right framework, and it cuts against a close-out. North Coventry recognized that a township may post a road and may require excess-maintenance protection for traffic that is actually likely to damage the highway. It objected when implementation failed to recognize exempt farm access and when signage deterred an equipment delivery. East Union has now told this Office that qualifying trips to [REDACTED] may use the exemption and that no § 189.3 determination has been made. The ordinance and the Benesch recommendation, however, still read as a full-length, year-round five-ton prohibition. That is the conflict ACRE exists to police—on the face of the restriction and as applied.

The Township's suggestion that the Office should wait for a citation is inconsistent with its own citation to Locust Township ACRE review does not require the farmer to absorb a ticket, a bond demand, or a refused delivery before the Office may act.

V. Requested disposition

We request that the Office

1. Keep this ACRE request open and not treat the September 18 letter as a complete answer;
2. Determine that the May 5, 2026 Benesch letter, as written, does not satisfy 75 Pa C S. § 4902(a) and Department regulations as to Phineyville Road (T-875), because it contains no road-specific measurements, no TE-109 or equivalent, no warrant for a five-ton threshold, and no consideration of seasonal posting or agricultural local traffic,
3. In the alternative, if the Office concludes some posting authority exists, require East Union Township to amend Ordinance No. 7-31-2026-003 and Chapter 13, § 205 so that the text expressly preserves 67 Pa. Code §§ 189.2–189.3 local traffic, including farm access to [REDACTED] and so that any withdrawal of that status follows § 189.3(b) notice,
4. Require that any signage on Phineyville Road not deter or misstate exempt agricultural access, consistent with 75 Pa.C.S. §§ 4902(e) and 6109(c) and with this Office's North Coventry analysis,
5. Confirm in writing that, on the Township's own present record, qualifying local agricultural traffic to or from [REDACTED] may exceed the posted five-ton limit without a permit or bond unless and until a lawful § 189.3(b) determination and notice occur, and
6. If additional engineering is to be considered, require a Phineyville-specific supplement—not another grouped paragraph covering seven unlike roads—addressing measured conditions, the selected tonnage, seasonality, and existing farm use

We welcome a conference with the Office. The Township asked for one. So do we. Lawful road maintenance and protected agricultural access are not the same thing as a five-ton year-round posting supported only by a visual survey and a one-number recommendation.

Thank you for your continuing review.

Very truly yours,

[REDACTED]
[REDACTED]
Enclosures

Township response dated September 18, 2026 (already served)

Benesch letter dated May 5, 2026, Project No. 0326-609017.02, with photographs and Figure 1

cc. Robert A. Willig, Senior Deputy Attorney General — [REDACTED]
[REDACTED], counsel for East Union Township — [REDACTED]
East Union Township Secretary — [REDACTED]