

# PUBLIC NOTICE



## Oregon Trail Solar Facility Request for Amendment 1 Notice of Proposed Order & Opportunity to Request a Contested Case

### **Summary:**

Notice Date: January 25, 2023

Site Certificate Amendment Request: Extend the construction commencement and completion dates and amend Condition 50(b).

Facility Location: Gilliam County

Review Process: Type A Amendment Review

### Purpose of Notice:

- 1) To inform the public that the Proposed Order on the Request for Amendment 1 has been issued **(described on Page 2 below)**; and
- 2) To notify individuals or organizations that commented on the record of the Draft Proposed Order of their right to request a Contested Case **(described starting on Page 3 below)**.

Deadline to Request a Contested Case: February 24, 2023, at 5:00 p.m. Pacific Standard Time (PST)

**Description of Facility: (Approved/Under Construction):** The Oregon Trail Solar Facility is an approved (September 25, 2020), but not yet constructed, energy facility to include any combination of wind and solar energy generation components not to exceed 41 megawatts (MW), including up to 16 wind turbines within an approximately 12,638 acre micro-siting area or up to 400 acres of solar photovoltaic components within a 1,228 acre solar micro-siting area. Facility components would be located within an approved 13,866 acre site boundary.

**Description of Requested Amendment:** The certificate holder seeks Council approval to amend Condition 24 to extend the beginning construction date by three years (from August 30, 2022 to August 30, 2025). This change also results in a three-year extension of the construction completion deadline

from August 30, 2025 to August 30, 2028. The amendment request also seeks approval to amend Condition 50(b) to clarify that construction monitoring for cultural resources only be required during grading, trenching or drilling at depths 12 inches or greater, rather than during all ground disturbance extending 12 inches or more below ground surface.

**Facility Location:** The facility site boundary is primarily located east and west of Highway 19, approximately 7.5 miles south of the City of Arlington.

A map of the facility site boundary is included in this notice. For detailed maps, please see RFA1 Figures 1 and 2 at <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/OTS.aspx> or visit our online mapping tool at <https://tinyurl.com/EFSCmap>.

### **EFSC Review Process Overview:**

Request for Amendment: The certificate holder filed a complete Request for Amendment 1 (RFA1) on December 19, 2022.

Draft Proposed Order Issuance: On December 23, 2022, the Department issued a Draft Proposed Order (DPO) on the RFA1, which is the Department's first evaluation of the proposed facility which includes findings of facts, conclusions of law and conditions of approval. In the DPO the Department recommended EFSC approve RFA1 and issue an amended site certificate.

Public Hearing: Pursuant to OAR 345-027-0367, a public hearing on the DPO was held on January 19, 2023 and the public comment period, which began on December 23, 2022, concluded at the close of the public hearing.

Council Review of the Draft Proposed Order: At its January 20, 2023 meeting, EFSC reviewed the DPO

and all submitted comments and provided their comments to the Department.

**Proposed Order:** The Proposed Order is the Department's second evaluation of the proposed facility and includes changes from the DPO made in response to comments raised on the record of the DPO and by EFSC. The Proposed Order recommends that the certificate holder has demonstrated compliance with all applicable standards and that EFSC grant an amended site certificate, subject to recommended, existing and amended conditions. All changes from the DPO are shown in the Proposed Order in underline/strikethrough format.

**Contested Case: The next step in EFSC's review process is the request for a Contested Case. Please go to Page 3 for information on how to request to a Contested Case.**

If there are no requests for a contested case within the established deadline, the amendment request will proceed to the Final Order step.

**Final Order:** Following the Contested Case step, EFSC will issue a Final Order either approving or rejecting the Request for Amendment 1. If approved, an amended Site Certificate will also be issued.

EFSC will make all decisions at public meetings. ODOE will provide public notice of the dates, times, and locations of all EFSC meetings.

Judicial review of Council's final order granting or denying the amendment request is as described in OAR 345-027-0372(5) and Oregon Revised Statute 469.403.

The Siting Division Public Guide contains additional information on the EFSC process. To view this information on the Department's website, please use the following link:

<http://tinyurl.com/EFSCPublicGuide>

For more information relating to EFSC standards, please visit:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/Siting-Standards.aspx>

**Receipt of this Notice:** Please note that you may be receiving this notice for multiple reasons:

1. You commented in person or in writing on the record of the DPO public hearing conducted under OAR 345-027-0367, discussed in this notice.
2. You own property within or adjacent to (within 500 feet) the property on which the facility site boundary is located. You will automatically receive all future notices on this facility.
3. You have requested to receive paper notices on the Oregon Trail Solar Facility. If you wish to be removed from this mailing lists, please contact Kathleen Sloan.
4. You have previously signed up via GovDelivery/ClickDimensions or by contacting ODOE to receive notices related to the Oregon Trail Solar Facility or all EFSC project-related notices. You will automatically receive all future notices per your request, unless you unsubscribe via ClickDimensions or by contacting ODOE.

**More Information:** Please Kathleen Sloan, Senior Siting Analyst, at the phone, email address or mailing address below.

Kathleen Sloan, Senior Siting Analyst  
Oregon Department of Energy  
550 Capitol Street NE, 1st Floor  
Salem, OR 97301  
Email: [kathleen.sloan@energy.oregon.gov](mailto:kathleen.sloan@energy.oregon.gov)  
Fax: 503-373-7806  
Phone: 971-701-4913

Additional information about the facility and updates on the review process is available using any of the following options.

- 1) **Oregon Department of Energy's webpage:** More details on the Oregon Trail Solar Facility including RFA1, the Draft Proposed Order and the Proposed Order are available online at: <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/OTS.aspx>

Additional resources to help you participate in the state siting process can be found at:

<http://www.oregon.gov/energy/facilities-safety/facilities/pages/default.aspx>

**2) Updates by email/mail:** Subscribe to ClickDimensions, a self-managed, automated email system that sends notices and updates related to the Oregon Trail Solar Facility as well as any or all other energy facilities and events under EFSC jurisdiction. For more information, please visit: <http://tinyurl.com/EFSC-email>. To receive notices by U.S. Mail, please contact Kathleen Sloan.

**3) In hardcopy:** Hard copies of RFA1, the Draft Proposed Order and the Proposed Order are available for public inspection at:

Oregon Department of Energy  
550 Capitol Street NE  
Salem, OR 97301

Please contact Kathleen Sloan if you wish to arrange a time to review hard copies. Hard copies will be provided at reasonable cost upon request to ODOE.

**Accessibility information:**

The Oregon Department of Energy is committed to accommodating people with disabilities. If you require any special physical or language accommodations, or need information in an alternate format, please contact Nancy Hatch at 503-428-7905, toll-free in Oregon at 800-221-8035, or email to [nancy.hatch@energy.oregon.gov](mailto:nancy.hatch@energy.oregon.gov). For any other accommodation needed to attend the public hearing, please contact ODOE as soon as possible so we may provide the accommodation.

**Contested Case Details:**

Overview: Per OAR 345-027-0371(5), only those persons who commented on the record of the DPO public hearing, either in person at the January 19, 2023 public hearing, or in writing between December 23, 2022 through January 19, 2023, are eligible to request a contested case.

The certificate holder is a party to any Contested Case, and the Department must participate in the contested case with the same rights as a party.

To properly raise an issue in a request for a contested case proceeding on the Proposed Order for an amendment, the issue must be within the

jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department did not follow the requirements of OAR 345-027-0367, or unless the action recommended in the Proposed Order differs materially from the DPO, including any recommended conditions of approval, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Council may not grant a contested case proceeding for that issue.

To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support that person's position on the issue.

Issues not raised on the record of the public hearing on the DPO may not be considered in a request for a contested hearing unless the Department did not follow the noticing requirements of ORS 469.310(2) or (3), or unless the action recommended in the Proposed Order, including any recommended conditions of approval, differs materially from the action recommended in the Draft Proposed Order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences.

Deadline to Request a Contested Case: Persons eligible to request a contested case must submit a written petition to the the Department. All petitions must be received no later than February 24, 2023 at 5:00 p.m. PST to be considered. Petitions may be submitted via U.S. mail, email or fax to the following address:

Kathleen Sloan  
550 Capitol Street NE, Salem, OR 97301  
Fax: 503-373-7806  
Email: [Kathleen.sloan@energy.oregon.gov](mailto:Kathleen.sloan@energy.oregon.gov)

If the Department does not receive the petition by February 24, 2023 at 5:00 p.m. PST the requesting person(s) will have waived any right to request a contested case.

Contents of a Petition for Party or Limited party

Status: A petition for party or limited party status must comply with OAR 345-027-0371(6) and include:

- (a) The person's name, mailing address and email address and any organization the person represents;
- (b) A short and plain statement of the issue or issues the person desires to raise in a contested case proceeding;
- (c) A statement that describes why the Council should find that the requester properly raised each issue, as described in OAR 345-027-0371(7), including a specific reference to the person's prior comments to demonstrate that the person raised the specific issue or issues on the record of the public hearing, if applicable;
- (d) A statement that describes why the Council should determine that each identified issue justifies a contested case, under the evaluation described in OAR 345-027-0371(9);
- (e) Name and address of the person's attorney, if any;
- (f) A statement of whether the person's request to participate in a contested case is as a party or a limited party, and if as a limited party, the precise area or areas in which participation is sought;
- (g) If the person seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the person's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
- (h) If the person seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the person's qualifications to represent such public interest; and
- (i) A statement of the reasons why others who commented on the record of the public hearing cannot adequately represent the interest identified in OAR 345-027-0371(6)(h) or (i).

A template petition is provided as an attachment to this notice, which can be used for submission of a petition in accordance with the submittal requirements outlined in this notice.

Council Review of a Request for Contested Case:

Before considering whether an issue justifies a contested case proceeding under OAR 345-027-0371(9), the Council must determine that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised each issue included in the request. To determine that a person properly raised each issue included in the request, the Council must find that:

- (a) The person making the contested case request raised the issue on the record of the public hearing described in OAR 345-027-0367 with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue;
- (b) The Department did not follow the requirements of OAR 345-027-0367; or
- (c) If the action recommended in the Proposed Order, including any recommended conditions of approval, differs materially from the action recommended in the DPO, the contested case request identified new issues that are related to such material differences.

If the Council finds that the person requesting a contested case failed to comment in person or in writing on the record of the public hearing or failed to properly raise any issue, as described in OAR 345-027-0371(7), the Council must deny that person's contested case request. If the Council finds that the person requesting a contested case commented in person or in writing on the record of the public hearing and properly raised one or more issues, the Council's determination of whether an issue justifies a contested case, as described in OAR 345-027-0371(9), must be limited to those issues the Council finds were properly raised.

After identifying the issues properly raised the Council must determine whether any properly raised issue justifies a contested case proceeding on that issue. To determine that an issue justifies a contested

case proceeding, the Council must find that the request raises a significant issue of fact or law that is reasonably likely to affect the Council's determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

The Council must take one of the following actions when determining if a request identifying one or more properly raised issues justifies a contested case proceeding:

(a) If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council must conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0014 and 345-015-0018 to 345-015-0085. The Council must identify the contested case parties and the issues each contested case party may participate on. The parties to a contested case proceeding must be limited to those persons who commented on the record of the public hearing and who properly raised issues in their contested case request that the Council found sufficient to justify a contested case, except that the certificate holder is an automatic party to a contested case. The issues a party to a contested case proceeding may participate on must be limited to those issues that party properly raised in its contested case request that the Council found sufficient to justify a contested case, except that the certificate holder may participate on any issue the Council found sufficient to justify a contested case proceeding;

(b) If the Council finds that the request identifies one or more properly raised issues that an amendment to the proposed order, including modification to conditions, would settle in a manner satisfactory to the Council, the Council may deny the request as to those issues and direct the Department to amend the proposed order and send a notice of the amended proposed order to the persons described in OAR 345-027-0371(4). Only the certificate holder and those persons who commented on the record of the hearing may, in a writing received by the Department within 30 days after the Department issues the

notice of the amended proposed order, request a contested case proceeding limited to issues related to the amendment to the proposed order. As described in OAR 345-027-0371(9), the Council must determine whether any issue identified in the request for a contested case proceeding justifies a contested case proceeding. A person's contested case request under this subsection must include:

(A) The person's name, mailing address and email address;

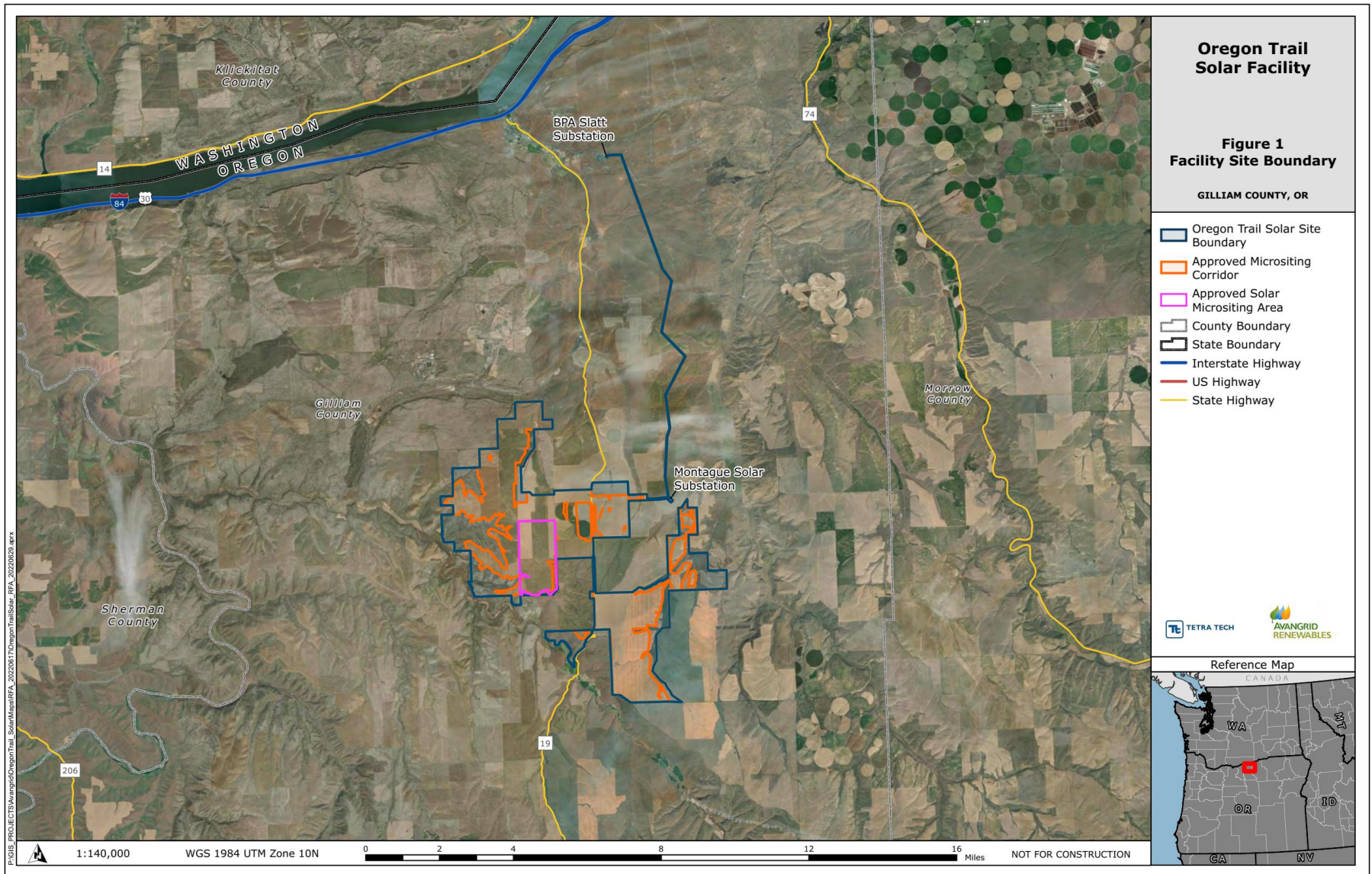
(B) A statement of the contested issues related to the amendment to the proposed order, including facts believed to be at issue; and

(C) A statement that describes why the Council should find an issue justifies a contested case, as described in OAR 345-027-0371(8); and

(c) If the Council finds that the request does not identify a properly raised issue that justifies a contested case proceeding, the Council must deny the request. In a written order denying the request, the Council must state the basis for the denial. The Council must then adopt, modify or reject the proposed order based on the considerations described in OAR-345-027-0375. In a written order the Council must either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council must issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.



**Figure 1: Oregon Trail Solar Facility – Facility Location and Site Boundary**



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**Summary of Proposed Order Material Changes  
(Recommended and Amended Site Certificate Conditions)**

The Department does not consider any of the changes to recommended and amended conditions, from the Draft Proposed Order to Proposed Order, to represent “material changes”.

Based on the January 19, 2023 Council review of the Draft Proposed Order, additional revisions to condition language is recommended in the Proposed Order for the following conditions:

- New Land Use Condition (see Section III.E.3)
- Recommended Amended Condition 60 (see Section IV.N.5)
- Recommended Amended Condition 67 (see Section III.P)

These revisions are not considered “material changes” because they do not result in a change to the recommendation of compliance with the standard or applicable requirement as presented in the Draft Proposed Order.

### Request for Contested Case (Template)

Notes:

1. This template was developed by the Oregon Department of Energy (Department) and is provided as a courtesy for persons seeking to request a contested case. Requestors are not required to use the template, but use is recommended to ensure requests contain required information and can be efficiently reviewed by Department staff and the Energy Facility Siting Council.
2. Please contact the Department representative, Kathleen Sloan, to request a Word version of the template.

Description	Explanation of Information	Requestor Information
<b>Requestor Name:</b>	Provide requestor first and last name.	
<b>Requestor Address:</b>	Provide physical mailing address and e-mail address, if available.	
<b>Requestor Attorney:</b>	Provide name and address of attorney, if any.	
<b>Authorized Representative:</b>	Provide name of any person(s) authorized by you to represent your issue(s) or confirm your intent to act as an authorized representative for the organization you intend to represent.	
<b>Name of Any Organization Requestor Represents:</b>	Confirm and provide the name of any organization(s) you represent in this proceeding, in addition to yourself.	
<b>Party Status Requested (Limited or Full):</b>	Confirm whether you are seeking to participate as a party or limited party and if as a limited party the precise area or areas in which you seek to participate.	
<b>If seeking to represent a personal interest:</b>	Provide a detailed statement of your personal interest (economic or otherwise).	
	Explain how your personal interest may be affected by the results of the proceeding.	
	Provide reasons why existing parties to the proceeding cannot adequately represent the personal interest you have identified.	
<b>If seeking to represent a public interest:</b>	Provide a detailed statement of the public interest you intend to represent.	
	Explain how such public interest would be impacted by the outcome of the proceeding.	



	Provide a reference to your qualifications to represent such public interest(s).	
	Provide reasons why existing parties to the proceeding cannot adequately represent the public interest(s) you have identified.	
<b>Issue Information</b>		
<b>Instructions: Provide information for Items (1) – (2) below for each issue requested for review in the proceeding.</b>		
<b>Issue 1</b>		
<b>Issue Statement:</b>	<p>Provide short and plain statement of each issue you wish to raise in a contested case, including facts or legal analysis presented in the Proposed Order or Request for Amendment believed to be at issue and provide a reference to applicable rules or statutes believed applicable to the issue.</p> <p><u>Examples:</u>  Issue #1. The evaluation of XX does not comply with XX because (identify and provide explanation of facts or legal analysis believed to be at issue); OR  Issue #1. I contend the applicant does not meet [cite specific Council standard or applicable law] because [provide brief explanation of why you believe applicant does not meet the cited standard or law]).</p>	
<b>Provide details showing the requested issue was properly raised:</b>	A statement that describes why the Council should find that the issue, as described in OAR 345-027-0371(7), including a specific reference to the person’s prior comments to demonstrate that the person raised the specific issue or issues on the record of the public hearing, if applicable.	
<b>Significant issue of fact or law.</b>	Per OAR 345-027-0371(9), a statement that describes how the request raises a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards.	

<b>Issue 2</b>		
<b>Instructions: If more than 1 issue, continue to provide responses to (1) and (2) for each additional issue requested for review in the proceeding.</b>		
<b>Issue Statement:</b>	<p>Provide short and plain statement of each issue you wish to raise in the contested case, including facts or legal analysis presented in the Proposed Order or RFA1 believed to be at issue and provide a reference to applicable rules or statutes believed applicable to the issue.</p> <p><u>Examples:</u>            Issue #1. The evaluation of XX does not comply with XX because (identify and provide explanation of facts or legal analysis believed to be at issue); OR            Issue #1. I contend the applicant does not meet [cite specific Council standard or applicable law] because [provide brief explanation of why you believe applicant does not meet the cited standard or law]).</p>	
<b>Provide details showing the requested issue was properly raised:</b>	A statement that describes why the Council should find that the issue, as described in OAR 345-027-0371(7), including a specific reference to the person’s prior comments to demonstrate that the person raised the specific issue or issues on the record of the public hearing, if applicable.	
<b>Significant issue of fact or law.</b>	Per OAR 345-027-0371(9), a statement that describes how the request raises a significant issue of fact or law that is reasonably likely to affect the Council’s determination whether the facility, with the change proposed by the amendment, meets the applicable laws and Council standards.	