



August 17, 2022

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street, P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Capitol Area Architectural and Planning Board Governing Commemorative Works in the Capitol Area, Minnesota Rules Chapter 2400; OAH 65-9055-37789; Revisor's ID Number R-4720

Dear Chief Judge Starr:

Administrative Law Judge (ALJ) Ann O'Reilly heard this matter on March 14, 2022. ALJ O'Reilly approved and disapproved portions of the rule in her Report dated May 18, 2022, and you concurred with the Report in your May 26, 2022 Report. The Report recommended two types of changes: (1) Changes necessary to address disapproved portions, and (2) Changes recommended but optional. CAAPB agrees to all changes under (1) and agrees to most of the changes under (2), except for 'suggested modifications' from CAAPB noted in this letter. This letter also identifies text edits requested by the Revisor.

CAAPB believes that its suggested additional modifications will complement and reinforce the Findings in Judge O'Reilly's report, and the report's recommended changes that CAAPB has incorporated. The suggested modifications are written to better articulate the intent of the rules, to be consistent with the Statement of Need and Reasonable (SONAR), and to remain substantially the same.

I. Disapproved Rule Parts.

The Capitol Area Architectural and Planning Board (CAAPB) agrees to make the changes that you and ALJ O'Reilly indicated were necessary for approval of the disapproved Parts, with some suggested modifications that may more clearly or fully address the points of concern identified in the report Findings and Conclusion, as indicated below:

Disapproved Rules - Amended as Recommended with Suggested Modifications

- 2400.2703, Subpart 3, item K (page 15)
- 2400.2703, Subpart 3, item N (page 17)
- 2400.2703, Subpart 7, item L (re-lettered to item M) (page 27)
- 2400.2703, Subpart 7, item M (re-lettered to item N) (page 28)
- 2400.2703, Subpart. 8, intro and items A-K (page 29)

II. Approved Rule Parts Subject to Changes Recommended by the Judge.

The Capitol Area Architectural and Planning Board (CAAPB) agrees to make the changes that you and ALJ O'Reilly recommended in the report, except for additional modifications suggested. The ALJ report approved the following proposed rule sections as to legality, with recommended wording changes for clarity and consistency. CAAPB accepted most of the recommended technical changes (Amended as Recommended), and suggested modifications to others (Amended with Suggested Modifications), as indicated below:

Approved Rules – Amended as Recommended

- [2400.2040, Subpart. 65a \(page 9\)](#)
- [2400.2703, Subpart. 1, items A and B \(page 9\)](#)
- [2400.2703, Subpart. 3, items A, B, C, F, H, I, L and M \(pages 10-16\)](#)
- [2400.2703, Subpart. 6, item B \(page 20\)](#)
- [2400.2703, Subpart. 7, items J and K \(page 24\)](#)
- [2400.2703, Subpart. 9, intro and items A, G, J, L and M \(page 25-26\)](#)

Approved Rules – Amended as Recommended with Suggested Modifications

- [2400.2040, Subpart. 24b \(page 6\)](#)
- [2400.2040, Subpart. 64a “public hearing” \(page 6\)](#)
- [2400.2040, Subpart. 64b “public meeting” \(page 7\)](#)
- [2400.2703, Subpart. 3, items D, E, G and J \(pages 11-14\)](#)
- [2400.2703, Subpart. 7, item D, E, F, G AND L \(pages 21-26\)](#)
- [2400.2703, Subpart. 9, item E \(page 30\)](#)

Suggested Modifications Responsive to Report

- [2400.2040, Subpart. 50b \(page 8\)](#)
- [2400.2040, Subpart. 65b \(page 9\)](#)
- [2400.2703, Subpart 10 \(page 31\)](#)

III. COPY OF THE RULE AS RECOMMENDED IN THE ALJ REPORT, WITH SUGGESTED MODIFICATIONS AND REVISOR EDITS

This letter provides a full copy of the rule showing the Department's changes. The copy incorporates most changes recommended in the ALJ report and identifies suggested modifications from CAAPB which attempt to clarify intent and respond to ALJ report findings. This rule copy further identifies requested edits from the Revisor to improve clarity and conformance with rule writing standards. Accompanying this letter are:

- [A Revisor copy of rule as originally proposed for the March 14, 2022 hearing;](#)
- [A Revisor copy of rule with all proposed changes since the March 14, 2022 hearing;](#)
- [A “clean” copy of the rules as shown in this letter \(for readability\); and](#)
- [A copy of the Proposed Order Adopting the Rule](#)

The rules that follow in this letter are organized in a somewhat different format than recent examples provided to CAAPB staff by OAH. This document shows the full text of proposed rules 2400.2040, 2400.2703 and 2400.2705, as approved by the ALJ and incorporating all of the recommended text revisions in the ALJ report. That is the base text for the rules

version shown in this document. Identified changes to the text are additional modifications suggested by CAAPB and are responsive to the ALJ report and findings.

The intent of this format is to provide context around the sections of change, which may make it easier to understand the efficacy of the change within that area of the rules. The document structure is illustrated and explained in the text box below.

GUIDE TO THIS LETTER -- HOW RULE SUGGESTIONS ARE ORGANIZED

Subparts and Items with suggested modifications are noted with a title before that section. The title text is slightly outset, blue, and ALL CAPS. The title identifies the subpart addressed, the type of the modification, and references the related ALJ report finding.

2400.20XX SUBP. 01 – SUGGESTED MODIFICATION
(FINDING OF FACT XXX)

Subp. 01. Rule language that was approved or was added to this version of the rules verbatim from an ALG text suggestion in her report, is shown in regular black text. If there is a **suggested modification of text** for consideration by the Chief ALJ, it is shown as red text with an underline is it's added text or crossed-out if it is suggested for deletion.¹ A footnote indicator follows areas of suggested modification.

¹ The rationale for the suggested modification is explained in the footnote. The footnote is located immediately below the paragraph with the changes. It will identify the area of the ALJ report that it is responsive to, as applicable. The footnote text is differentiated from the rule text by being inset and in a smaller font.

Subp.02. The Revisor reviewed and edited these rules and the 'suggested modifications'. Revisor edits are shown in sky blue text and noted in footnotes. Only a couple of the Revisor edits are explained, the majority are self-explanatory edits that improve readability and conform with rule writing protocols.

If you have questions about the enclosed documents or if you wish to discuss these rules with me, you may contact me at (651) 529-5247. After your review, please send any correspondence regarding the rules to me at merritt.clapp-smith@state.mn.us.

Sincerely,

Isi Merritt

Merritt Clapp-Smith, CAAPB Executive Secretary

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**Proposed Rules of The Capitol Area Architectural
and Planning Board**

Governing Commemorative Works in the Capitol Area

Minnesota Rules Chapter 2400

OAH 65-9055-37789

Revisor's ID Number R-4720

DRAFT August 17, 2022

2400.2040 DEFINITIONS.

Subp. 3a. **Addition request.** "Addition request" means the application form that an applicant submits to the board requesting the addition of a new artwork and describing why the applicant believes that the artwork should be added to the commemorative artwork collection.

Subp. 8a. **Applicant.** "Applicant" means a person or group that submits an application for an addition, modification, or removal of the artwork.

Subp. 8b. **Architectural advisers.** "Architectural advisers" means the three members of the Advisory Committee on Architecture and Planning established under Minnesota Statutes, section 15B.11, who are responsible for advising the board on all architectural and planning matters.

Subp. 19a. **Board staff.** "Board staff" means the employees of the Capitol Area Architectural and Planning Board, led by the executive secretary, who execute the decisions of the board.

Subp. 19b. **Capitol grounds.** "Capitol grounds" means the exterior areas of any state-owned land in the Capitol area including state-owned rights-of-way, the Capitol mall, and the exterior courtyards of state-owned buildings.

Subp. 19c. **Capitol mall.** "Capitol mall" means the open space between the Department of Transportation Building, Centennial Building, Veterans Services Building, and the Capitol, including the lawn surrounding the Capitol.

Subp. 19d. **Commemorative artwork.** "Commemorative artwork" means a monument, memorial, or other type of original piece in any style, expression, genre, or media that is the unique creative expression of an artist designed to memorialize cultural, social, and political aspects of Minnesota's history. A commemorative artwork expresses or reflects the collective memory of an individual person, group, or event. Commemorative artwork serves four primary functions:

- A. to memorialize and remember;
- B. to inform and inspire the viewer;
- C. to have lasting historic and cultural significance; and
- D. to accentuate and enhance the urban landscape.

Commemorative artwork may be event-based, temporary, or long-term. Any commemorative artwork that is event-based as defined under subpart 41a is not within the scope of this subpart.

Subp. 24a. **Design framework.** "Design framework" means a plan that provides a structure for the organized development of an area to prevent ad hoc decision-making.

2400.2040 SUBP. 24B – AMENDED AS RECOMMENDED, EXCEPT SUGGESGTD MODIFICATIONS
(FINDING OF FACT 139)

Subp. 24b. **Design process.** "Design process" means the process that the board follows after the board approves a request for the addition or modification of a commemorative artwork and includes:

A. the designer or design consultant selection and hiring process:: soliciting, selecting and hiring a designer or design consultant;*

~~B.A. the~~ approval of a schematic design: the description of the overall design concept for an artwork;

~~C.B.~~ design development: a refined version of the schematic design with scaled drawings showing the architectural and site plan details and list of materials;

~~D.C. the~~ review and execution of construction documents: the instructions for contractors to build the artwork; and

~~E.D.~~ the bidding process: the search for a contractor to execute the artwork, based on price and qualifications.

*Revisor suggested modification identifies that selecting and hiring a designer is part of the design process. The activities were formerly associated with a design competition, but the formal language of design competitions was removed in previous draft revisions to the rule text.

Subp. 24c. **Designer.** "Designer" means a person recognized as the lead practitioner in the creative vision and design development of an artwork.

Subp. 25a. **Disposition.** "Disposition" means the termination of ownership and possession of an artwork from the commemorative artwork collection through sale, donation, or demolition.

Subp. 41a. **Lifespan.** "Lifespan" means the time that an artwork is displayed in the Capitol area, which is:

- A. event-based: an artwork displayed in the Capitol area for up to 14 days;
- B. temporary: an artwork displayed in the Capitol area for 15 days to one year; or
- C. long-term: an artwork displayed in the Capitol area for more than one year.

Subp. 50a. **Modification.** "Modification" means a process that changes the meaning, character, appearance, or interpretation of an artwork. A modification includes:

- A. a relocation: the movement of an existing artwork to a different location in the Capitol area;
- B. a structural modification: the addition, removal, or alteration of any physical aspect of an artwork; or
- C. a recontextualization: the addition of interpretive material to an artwork, such

as additional signage.

2400.2040 SUBP. 50B – SUGGESTED MODIFICATION
(FINDING OF FACT 248)

Subp. 50b. **Modification request.** "Modification request" means an ~~application form that an applicant's request to modify submits to the board regarding~~ a specific artwork ~~describing why that~~ the applicant ~~submits to the board on an application form describing why the applicant~~ is requesting to modify or relocate the artwork ~~and including the primary concept and proposed plan elements of modification to the artwork and surrounding site.~~¹ ~~and requesting modification of the artwork.~~

¹ The suggested change is responsive to ALJ report finding #248 recommending that *"the Board should address, in some way, the review and approval of modification and removal plans."* It intends to clarify that a modification request needs to include a basic concept of what the applicant proposes to alter in the artwork, the site, or the signage, which will be reviewed during the process.

- REVISOR corrections shown in blue.

2400.2040 SUBP. 64A – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDING OF FACT 144)

Subp. ~~64a.~~² **Public hearing.** "Public hearing" means a formal proceeding held by the board to receive comment from interested parties, including members of the public, on a proposed issue or action before the board for consideration or decision under Minnesota Rules part 2400.2700, subparts 3 and 7. ~~At least 30 days prior to the hearing date, notice shall be: (1) posted on the board's website; (2) sent mailed to the applicant; and (3) sent to served on any other party requiring notice under Minnesota Rules part 2400.2703.~~³

² The subpart numbering for this definition and the definition of "Public Meeting" were provided by the Revisor. The numbering follows the somewhat irregular numbering for the other definitions herein, since the new definitions are incorporated into an existing list of definitions referenced throughout M. Rule 2400. ALJ report finding #146 urged a comprehensive renumbering of the subparts in 2400.2040 to accommodate the new definitions. CAAPB intends to do this when it undertakes a comprehensive rules update of M. Rule 2400 in the next few years, to bring the chapter into compliance with the Comprehensive Plan for the Minnesota State Capitol Area adopted in 2021.

³ Revisor corrections shown in blue. The Revisor moved the hearing notice description to a new location by adding 2400.2703 subpart 10.

2400.2040 SUBP. 64B – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION

(FINDING OF FACT 144 – FOOTNOTES 174-177)

Subp. 64b. **Public meeting.** “Public meeting” means a meeting ~~held by the board or its designated committee~~ that is open to attendance by the public and is hosted online or in a physical location accessible to the general public. ⁴ ~~Public meetings must comply with all requirements of Minnesota Statutes, chapter 13D.~~

⁴ Suggested change removes the ALJ suggested language that the public meeting will be “held by the board or designated committee”. The host, form and process for public meetings and notice instead spelled out in the Revisor’s addition of a Subpart 10 to 2400.2703. Definitions in 2400.2040, such as “public meeting”, can be referenced in other parts of Chapter 2400 and should be broadly defined to apply across the chapter.

- Revisor corrections shown in blue.

2400.2040 SUBP. 65A – AMENDED AS RECOMMENDED

(Finding of Fact 139)

Subp. 65a. **Removal.** "Removal" means the removal of an artwork from the Capitol grounds.

2400.2040 SUBP. 65B – SUGGESTED MODIFICATION

(FINDING OF FACT 248)

Subp. 65b. **Removal request.** "Removal request" means an applicant’s request to remove a specific artwork application form that an the applicant submits to the board on an application form regarding a specific artwork, describing why the applicant is requesting to remove the artwork and including a potential disposition plan and a concept plan for restoration of the site after the artwork is removed. ⁵ ~~and requesting removal of the artwork.~~

⁵ Suggested change is responsive to ALJ report finding #248 recommendation that “the Board should address, in some way, the review and approval of modification and removal plans.” The change makes clear that a removal request needs to include a suggested approach for disposition, and concept for site restoration, which makes these items elements of the review.

- Revisor corrections shown in blue.

Subp. 69a. **Spatial envelope.** "Spatial envelope" means the shared, multidimensional space surrounding an artwork.

2400.2703 STANDARDS FOR COMMEMORATIVE ARTWORK.

2400.2703 SUBP. 1A-1B – AMENDED AS RECOMMENDED

(FINDING OF FACT 148)

Subpart 1. Guiding principles for commemorative artwork.

A. The collection of commemorative artwork on the Capitol grounds must reflect the state's diverse history and people.

B. The board must:

- (1) provide for public input, public access, and transparency in making decisions about commemorative artwork on the Capitol grounds; and
- (2) review existing commemorative artwork as needed or every ten years to:
 - (a) gather public input regarding the commemorative artwork collection; **and**
 - (b) ensure that the artwork in the commemorative artwork collection meet the standards and intent of parts 2400.2040 and 2400.2703.

C. All decisions about commemorative artwork must account for the historic, architectural, and artistic integrity of the Capitol building and grounds.

Subp. 2. Conditions for adding new artwork. The board must consider displaying new commemorative artwork in the Capitol area if the artwork meets all of the following conditions:

- A. there has been documented public support of the artwork;
- B. the artwork has lasting statewide significance for Minnesotans;
- C. the artwork is respectful of the diversity of Minnesotans;
- D. viewing the artwork provides a rich experience to broaden the understanding of Minnesota's shared history, heritage, and culture; and
- E. if an individual is the subject of an artwork, the individual must:
 - (1) have lived in Minnesota or the geographical area now identified as Minnesota for at least five years during the individual's life;
 - (2) have historical significance;
 - (3) be renowned and admired by Minnesotans; and
 - (4) have been deceased for at least ten years.

Subp. 3. Application and review process for new artwork.

2400.2703 SUBP. 3A-3C – AMENDED AS RECOMMENDED

(FINDING OF FACT 164 – FOOTNOTES 200-206)

A. **Application.*** An applicant requesting placement of a new commemorative artwork in the Capitol area must submit an addition request to the board, using the form available on the board's website. The board website must provide clear and accessible instructions for completing the application form. Within ten calendar days of the board's receipt of an addition request, board staff must determine whether the application form is complete and inform the applicant of that determination. If board staff find that the application is ~~found~~ incomplete, board staff must advise the applicant that the application is incomplete and identify what information is missing to the applicant.

* The Revisor indicates that including a bold title for subpart items is inconsistent with rule format protocols. CAAPB had such titles in original drafts and they were removed by the Revisor. However, CAAPB will re-introduce titles in a more user-friendly guide of commemorative work requirements.

- Other Revisor corrections shown in blue.

B. **Staff Report.**—Once board staff determine that an application is determined to be complete, board staff must review the addition request and analyze whether the request ~~it~~ meets all of the conditions in subpart 2. Board staff shall prepare a written report of ~~it's~~ the staff's findings.

- Revisor corrections shown in blue.

C. **Posting.** Board staff must post a summary of the addition request, ~~as well as the~~ and the board staff report on the board's website. The posting ~~shall also must~~ include timely updates about the application's status, opportunities for public input, and meetings of the board at which the application ~~shall will~~ be discussed or voted upon.

- Revisor corrections shown in blue.

2400.2703 SUBP. 3D – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION

(FINDING OF FACT 164 – FOOTNOTES 207 AND 208)

D. **~~Initial Comment Period and Public Meeting.~~**⁶ After the staff report is posted on the board website, the board must open a 30-day comment period and direct board staff to host or cohost ~~hold~~ at least one public meeting hearing.⁷ to gather input on whether the addition request meets all of the conditions set forth in subpart 2. The public meeting may be hosted, organized, and managed according to subpart 10.

⁶ Suggested title change matches the title the ALJ suggested for the similar step in

Letter to the Chief ALJ with suggested rule modifications based on May 26, 2022 ALJ Report

Subpart 7, Item D, except that 'Meeting' is proposed instead of 'Hearing'. (This suggested modification is mute based on Revisor's removal of item titles.)

⁷ Suggested change from 'hearing' to 'meeting'. The intent of Subpart 7, Item D is to host a "public meeting", as defined in 2400.2040. A board "hearing", per se, will occur as a next step as described in Subpart e, Item E.

- Revisor corrections shown in blue.

2400.2703 SUBP. 3E – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDING OF FACT 164 – FOOTNOTES 209 - 211)

E. ~~Staff Recommendation and Board Decision. When~~ the 30-day⁸ comment period and public meeting⁹ ~~hearing~~ are complete, board staff shall prepare a written summary of the public comments that the board received and provide a recommendation to the board on whether to accept the application and proceed to the next step in the project review process or reject the application for failing to meet all conditions set forth in subpart 2. The board shall meet and host a public hearing¹⁰ to consider the addition request, staff report and recommendation, and public comments that the board received. The board shall determine whether the addition request meets all of the conditions ~~set forth~~ in subpart 24¹¹ and ~~can may~~ advance for further review. A majority vote of the full board is required to accept the application and advance it for further review.

⁸ Suggested addition of "...30-day" would create parallel sentence structure with Subpart 7, Item E, where the ALJ recommended the addition of "30-day".

⁹ Suggested change from 'hearing' to 'meeting' follows suggested changes to the same in Subpart 3, Item D.

¹⁰ Suggested language clearly identifies that the board will host a public hearing during its board meeting. The protocol for a "public hearing" is defined in 2400.2040.

¹¹ Suggested change from "...in subpart 1..." to "...in subpart 2..." to address what seems to be a reference typo.

- Revisor corrections shown in blue.

- (1) If the board accepts an addition request application, board staff must notify the applicant and the Department of Administration within 14 calendar days of the board's vote accepting the application for further review.

2400.2703 SUBP. 3E – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDING OF FACT 164)

- (2) If the board rejects an addition request application¹² for failing to meet all of the conditions of subpart 2, board staff must notify the applicant in writing within 14 calendar days of the board's vote rejecting the application and provide the applicant

with reasons for the rejection.

- ¹² Suggested change creates parallel sentence structure with previous item
- Revisor corrections shown in blue.

2400.2703 SUBP. 3F – AMENDED AS RECOMMENDED

(FINDING OF FACT 164)

F. **Site Selection Study.** After an addition request application is accepted by the board for further review, board staff and it's the board's architectural advisers must conduct a site selection study with the applicant. The Department of Administration must review and comment on proposed sites for the commemorative artwork. Board staff and it's the board's architectural advisers must recommend a site for the proposed artwork to the full board based on the criteria for the location of new artwork set forth in subpart 4.

- Revisor corrections shown in blue.

2400.2703 SUBP. 3G – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION

(FINDING OF FACT 164 - FOOTNOTES 212-216)

G. **Public Meeting on Site Selection.**¹³ After board staff and it's the board's architectural advisers identify a site for the proposed commemorative artwork, the board shall meet ~~must hold a public meeting~~ to determine whether the proposed location meets all of the criteria set forth in subpart 4. After an opportunity to hear public comments at the board meeting, the board shall vote on the location of the commemorative artwork. A majority vote of the full board is required to accept a site location for any new commemorative artwork. The board must notify the applicant in writing of the board's site selection decision within 14 ~~10~~ calendar days of the meeting.

- ¹³ Suggest revising title and the first sentence to be consistent with the proposed definition for “Public Meeting” in Subpart XX, which specifically differentiates between a public meeting and a board meeting. Step G (above) describes a board meeting that is open to public testimony; it does not describe a “Public Meeting” under the proposed definition. In addition, suggest changing from 10 calendar days to 14, to be consistent with the 14 calendar day notifications in subpart 3, item E(2) and item G. (This suggested modification is mute based on Revisor’s removal of item titles.)

- Revisor corrections shown in blue.

2400.2703 SUBP. 3H-3I – AMENDED AS RECOMMENDED

(FINDINGS OF FACT 164 AND 172)

H. **Design Process Funding.** If the board accepts the addition request application and approves of and the artwork's location, the applicant must raise money or otherwise pay

for the cost of completing the design process. ~~This money covers the cost of the design process, including but not limited to promotion, publicity, design review group expenses, and, in the case of a formal competition, awards or stipends for the design competition finalists.~~*

* Revisor recommends striking the last sentence since the elements of a design process are listed in 2400.2040 Subpart 24b Design Process.

I. **Design Framework.** The applicant must work with board staff and the board's architectural advisers to develop a design framework document that includes:

- (1) the goals and objectives of the applicant;
- (2) the applicable zoning standards, project planning parameters, or design guidelines for the selected site;
- (3) the proposed budget, schedule, location, site-specific conditions, and technical parameters;
- (4) the plan for informing and engaging key stakeholders and members of the public during the design process; and
- (5) additional design process guidelines, including the composition of the design selection group, designer qualifications, the criteria that the design selection group must use, and submission requirements.

- Revisor corrections shown in blue.

2400.2703 SUBP. 3J - AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDING OF FACT 179 - FOOTNOTES 227-229)

J. **Testimony to the Legislature.** In accordance with Minnesota Statutes, section 15B.21, subdivision 3, the board must provide testimony to the legislature on any commemorative artwork proposal in the Capitol area seeking ~~legislative authorization or an~~¹⁴ appropriation of funding. The applicant may be asked to testify about the applicant's proposal. This testimony must address the proposal's alignment with the design objectives of the Comprehensive Plan for the Minnesota Capitol Area, which is incorporated by reference, is not subject to frequent change, and is available on the Capitol Area Architectural and Planning Board website.

¹⁴ Suggest that reference to 'legislative authorization' be removed. CAAPB does not need or seek legislative authorization for commemorative works; it only seeks an appropriation of funding. Reference to authorization might lead some people to assume that commemorative works activities need legislative review, which they do not.

- Revisor corrections shown in blue.

NOTE: It may be possible to remove all of Subpart 3, Item J, since the same activity is referenced more succinctly at the end of Subpart 3, Item L.

2400.2703 SUBP. 3K – **AMENDED AS RECOMMENDED TO ADDRESS DISAPPROVAL**, WITH SUGGESTED MODIFICATION

(FINDING OF FACT 184 - FOOTNOTES 227-229)

K. **Design Review Group and Selection.** Using the design framework developed according to item I and¹⁵ design objectives in the Comprehensive Plan for the Minnesota Capitol Area incorporated by reference under item J, the board must initiate either an open solicitation for design proposals or a request for qualification process to select a designer or design concept through a competitive process outlined in the design framework¹⁵ and in accordance with the following steps:¹⁷ ~~design competition.~~

¹⁵ Suggested addition of references to the “design framework” (from Item I) clarifies that it is an important reference document for design review activities. It replaces the term design competition, which has a more formal meaning and approach that may not be suitable to all design solicitation efforts.

¹⁶ N/A – Suggested modification was removed by the Revisor.

¹⁷ Suggested addition of numeric steps 1-3 below breaks up what was previously a very long paragraph into steps that address specific items. The intent is to make the section easier to read and understand.

(1) The board must assemble a design review group to assist the board ~~in~~ with selecting a design, designer, or design concept. The design review group must include:¹⁸

- a. the applicant;~~;~~
- b. ~~at least~~ two board members;~~;~~
- c. ~~two or three~~ architectural advisers;
- d. ~~one person appointed by the commissioner of the Department of Administration to represent the agency; Department of Administration staff,~~
- e. ~~a representative from the~~ Minnesota Historical Society~~; staff,~~
- f. ~~two professionals appointed by the board that are experienced in the fields of visual art, public art, art history, architecture, or history; designers,~~
- g. ~~at least~~ two members of the public appointed by the board ~~chair,~~¹⁹
- h. ~~up to five additional committee members appointed by the board as needed for professional expertise; and any other professionals that the board determines necessary to help the board select a design, designer, or a design concept.~~
- i. board staff to oversee and support the committee’s work.

¹⁸ Suggested revision of Subpart 3, Item K(1) to match the list structure for identifying group composition as done in Subpart 7, Item F. The list format is easy to read, and the simplified and uniform wording for each item improves clarity. The identified parties in 3K(1) are also re-ordered to align with the order in Subpart 7, Item F.

¹⁹ Suggested removal of reference to “board chair” is done for two reasons. First, the board has the duty of appointing members to advisory task forces and committees, not the board chair alone. (See MN Statute 15.014, subd. 2. regarding board appointment of advisory task force members.) Second, the reference to appointing in

Letter to the Chief ALJ with suggested rule modifications based on May 26, 2022 ALJ Report

item (1)g. is unnecessary since the start of the section identifies that the board will appointment all members.

- Revisor corrections shown in blue.

- (2) The design review group must review the design proposals, designer applications, or design concept applications and vote for a design, designer, or design concept to recommend to the board.
- (3) After considering the design review group's recommendations, the board must vote to approve or reject the design review group's recommendation. A majority vote of the board is required to accept a design, designer, or design concept.²⁰

²⁰Subpart 3, Item K(3) above is revised exactly as recommended by the ALJ. The revised text remedies the defect under which it would otherwise be DISAPPROVED, as was explained in ALJ report findings 184 and 185:

"184. The final design and designer selection is an important decision that falls within the statutory authority of the Board, not others. Therefore, while a design review group is certainly helpful, it cannot be charged with final authority over the selection of the design or designer of a commemorative work. This improperly delegates the Board's authority to others. According, proposed Rule 2400.2703, subp. 3, item K, as modified, is DISAPPROVED."

"185. To remedy this defect, the Administrative Law Judge recommends that the following changes be made to item L: . . . "

- ~~(4) All design competitions must follow the procedures in The Handbook of Architectural Design Competitions, which is incorporated by reference, is not subject to frequent change, and is available on the American Institute of Architects website.~~²¹

²¹Revisor suggests removal of this subitem since the prior steps do not refer to use of a 'design competition', which CAAPB suggests removing from the introduction of subpart K, and instead refer to a 'design framework' as described in item I.

2400.2703 SUBP. 3L-3M – AMENDED AS RECOMMENDED

(FINDINGS OF FACT 189 AND 192)

L. **Project Costs.** Upon selection of a designer and design concept by the design review group but before design and construction begin, the applicant must deposit with the Department of Administration enough money to complete the project as designed and an amount equal to 20 percent of the total estimated construction costs to cover the cost of operation, repairs, and maintenance of the work over time. Board staff ~~shall be are~~ available to provide testimony to the legislature under Minnesota Statutes section 15B.21, subdivision 3, but shall not raise money for the applicant.

- Revisor corrections shown in blue.

M. **Working Group.** After project costs are deposited with the Department of

Administration, as required under this subpart~~3~~, board staff and advisers, a designer or an artist, an applicant committee, and a Department of Administration project manager must form a working group to monitor the design framework and budget during the schematic design and design development phases. With guidance from the working group, the selected designer must enter into a contract with the Department of Administration that includes a project timeline and budget.

- Revisor corrections shown in blue.

2400.2703 SUBP. 3N – **AMENDED AS RECOMMENDED TO ADDRESS DISAPPROVAL**, WITH SUGGESTED MODIFICATION

(FINDINGS OF FACT 194-201 - FOOTNOTES 244-250)

N. **Final Approvals.** The selected designer must proceed with the schematic design and design development phases of the design process with regular working group reviews. The board must approve the project's design framework, final schematic design, and design development. The final schematic design must comply with the project's design framework, the Comprehensive Plan for the Minnesota Capitol Area, and all parts of this rule. After board approval of the final schematic design and design development, the project may proceed with construction documents and bidding under the guidance of the Department of Administration. the working group.²² The board executive secretary is authorized to review execute²³ construction and bid²⁴ documents for consistency with the schematic design and design development²⁵ that have been approved by the board.

²² Suggested that the word "execute" be replaced with "review". CAAPB reviews the construction documents to ensure consistency with the schematic design and design development. The word "execution" implies implementation of the construction documents, which is managed by the Department of Administration, not CAAPB.

²³ Suggested that reference to bid documents be removed because CAAPB does not review or approve bid documents. That is conducted by the Department of Administration.

²⁴ Suggested words for addition reiterate that the board approves schematic design and design development, and not the construction documents themselves. Review of the construction documents is conducted by the executive secretary and the Department of Administration, in a manner that ensures consistency with board approved design.

²⁵ Subpart 3, Item N above is revised to closely match the recommendation of the ALJ, except as noted above. The revised text remedies the defect under which it would otherwise be DISAPPROVED, as explained in ALJ report finding 194-201. In summary, the ALJ's recommended changes that are incorporated and the suggested modifications:

- Identify that the board approves the design framework, final schematic design and design development.
- The Department of Administration oversees the construction and bid

documents.

- The executive secretary is only delegated authority to review the construction documents for consistency with the schematic design and design development, as approved by the board.

- Revisor corrections shown in blue.

Subp. 4. **Criteria for determining location of new artwork.** The board must use the following criteria to evaluate the proposed location for a commemorative artwork in the Capitol area:

- A. The site of the proposed location must be visible to people nearby and accessible to all members of the public.
- B. The scale of the artwork must fit the artwork's location, providing familiarity to the viewer while not being overpowering. The artwork's size must not detract from the Capitol. The board must consider the artwork's visual and spatial relationships to the artwork's surroundings.
- C. The use of the site must not interfere with any existing artwork.
- D. The use of the site must maintain and protect existing open space and the space's public use.
- E. The location must follow all applicable zoning, environmental, code, and public safety rules and regulations.
- F. The artwork must fit within the thematic organization of the Capitol grounds and comply with the design objectives of the Comprehensive Plan for the Minnesota Capitol Area, which is incorporated by reference in subpart 3, item J. The board must consider the site's relationship to other artwork and the Capitol.

2400.2703 SUBP. 5 – SUGGESTED MODIFICATION

(FINDINGS OF FACT 246)

Subp. 5. **Criteria for design of new or modified²⁶ artwork.** The board must use the following criteria to evaluate and guide the design of a proposed new or modified commemorative artwork:

²⁶Suggested addition of references to 'modified' artwork is intended to address ALJ report finding #246 which states, ". . . For an example, for a modification, there would need to be some plans or designs for the modification that would need to be reviewed by the Board. . . ."

- A. The artwork must encourage engagement with the public and provide amenities such as seating.
- B. The design and setting of an artwork must consider climatic elements like sunlight, shade, wind, and the varied Minnesota seasons.
- C. An artwork must seek to enhance the beauty of the Capitol area, while respecting the State Capitol's art and architecture. An artwork must embrace a design scheme that complements the Capitol area's historic features.
- D. An artwork's illumination must not compete with or distract from the sight of the Capitol. If an artwork uses evening illumination, the artwork must integrate the illumination into the artwork's design and not obstruct the view of other artwork.
- E. The landscape design of an artwork must incorporate hardy, low maintenance plantings that are not prone to overgrowth.
- F. The intended message of the artwork must be clear and understandable. The artwork must convey a meaning of enduring value for future generations. The artwork may incorporate signage.
- G. Materials for the artwork must be visible to people nearby, durable, and compatible with the artwork's setting. To address durability concerns, the board must give preference to an artwork made of bronze over stainless steel. The board must give preference to an artwork using stone, such as granite or limestone, for key features, vertical elements, flooring, and surfaces. If an artwork uses concrete, the board must consider the artwork's color, texture, scoring, aggregate, and density. An artwork must not include metal seating that could cause burns.
- H. The proposed artwork must not interfere with any existing artwork. Any element of the artwork other than trees must not exceed 20 feet in height.
- I. The size of the artwork must reflect the artwork's importance and adhere to the design objectives in the Comprehensive Plan for the Minnesota Capitol Area, which is incorporated by reference in subpart 3, item J. Due to the limited open space on the Capitol grounds, the board must give preference to smaller commemorative artwork.
- J. A freestanding artwork must affect the space in which the artwork stands. The size of the surrounding spatial envelope must be compatible with the scale of the artwork.
- K. The artwork's design, construction, materials sourcing, and maintenance must conserve energy and water resources.

L. The design and placement of an artwork must consider contextual issues, such as the artwork's orientation and background. The artwork's height and scale must be appropriate to the artwork's location on the Capitol mall.

Subp. 6. **Conditions for modification or removal of an existing artwork.** The board must consider requests for the modification or removal of an existing commemorative artwork if one or more of the following conditions apply:

A. there has been sustained, broad-based, and documented public objection to the artwork;

2400.2703 SUBP. 6B – AMENDED AS RECOMMENDED

(FINDINGS OF FACT 222-224 - FOOTNOTE 266)

B. the artwork conflicts with the guiding principles [set forth](#) in subpart 1, item A;

- Revisor correction shown in blue.

C. the artwork has faults in construction or requires maintenance such that the Department of Administration is unable to properly care for or store the artwork;

D. the site for the artwork is no longer safely accessible to the public or is due to be demolished; or

E. significant changes in the use, character, or design of the site require a re-evaluation of the relationship of the artwork to the site.

Subp. 7. **Application and review process for modification or removal of an existing artwork.**

2400.2703 SUBP. 7A-7C – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION

(FINDING OF FACT 234 - FOOTNOTES 277 AND 278)

A. **Application.** An applicant requesting the modification or removal of a commemorative artwork in the Capitol area must submit ~~to the board~~ a modification or removal request ~~to the board~~²⁷ using the [application](#) form available on the board's website. The [board](#) website must provide clear and accessible instructions for completing the application form. Within ten calendar days of the board's receipt of the application, board staff must determine whether the application form is complete and inform the applicant of the determination. If the application is ~~found~~ incomplete, board staff must advise the applicant that the application is incomplete and identify what information is missing [to the applicant](#).

²⁷ Suggested language would create parallel sentence structure with similar step in Subpart 3, Item A.

- Revisor corrections shown in blue.

B. **Staff Report.** Once board staff determine an application is ~~determined to be~~ complete, board staff must review the modification or removal request and analyze whether the request it meets ~~one or more~~ all²⁸ of the conditions in subpart 6. Board staff ~~must~~ shall prepare a written report of the staff's findings.

²⁸ It appears that that 'all' is a typo, as it is inconsistent with the opening statement of Subpart 6, and therefore should be modified to 'one or more'.

- Revisor corrections shown in blue.

C. **Posting.** Board staff must post a summary of the modification or removal request ~~and, as well as~~ the board staff report on the board's website. The posting shall ~~also~~ include timely updates about the application's status, opportunities for public input, and meetings of the board at which the application ~~shall will~~ be discussed or voted upon.

- Revisor corrections shown in blue and reference subpart 10 added by the Revisor.

2400.2703 SUBP. 7D – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDING OF FACT 235 - FOOTNOTE 278)

D. ~~Initial Comment Period and Public Meeting Hearing.~~²⁹ After ~~the board posts the board~~ staff post the report on the board website, the board must open a 30-day comment period and ~~direct board staff to host or co-host hold~~ at least one public meeting hearing to gather input on whether the modification or removal request meets one or more of the conditions under subpart 6. The public meeting may be hosted, organized, and managed according to subpart 10.

²⁹ Suggested changes from 'hearing' to 'meeting'. The intent of Subpart 7, Item D is to host a "public meeting", as defined in 2400.2040. A board "hearing", per se, will occur as a next step as described in Subpart 7, Item E. (This suggested modification is mute based on Revisor's removal of item titles.)

- Revisor corrections shown in blue and reference subpart 10 added by the Revisor.

2400.2703 SUBP. 7E – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDING OF FACT 235 - FOOTNOTE 279)

E. **Staff Recommendation and Board Decision.** When the 30-day comment period and public meeting hearing³⁰ are complete, board staff shall prepare a written summary of the public comments that the board received and provide a recommendation to the board on whether to accept the application and proceed to the next step in the review process or reject the application for failing to meet one of more of the conditions in subpart 6. The

board shall then meet ~~and host a public hearing~~³¹ to invite additional public comments ~~and~~ consider the modification or removal request, staff report and recommendation, and public comments that the board received before and during the hearing. ~~The board meeting shall be open to the public and public comment shall be invited. After hearing additional public comment, t~~³² After considering all public comments, the board shall vote on whether the modification or removal request application³³ meets one or more of the conditions in subpart 6 and ~~may can~~ advance for further review. A majority vote of the full board is required to accept the application and advance it for further review.

³⁰ Suggested change from 'hearing' to 'meeting' follows suggested change to the same in Subpart 7, Item D and Subpart 3, Item E.

³¹ Suggested language clearly identifies that the board will host a public hearing during its board meeting. The protocol for a "public hearing" is defined in 2400.2040.

³² Suggested sentence for removal does not exist in the similar step of Subpart 3, Item E, and the two are intended to have parallel language. In addition, the sentence is not needed since the addition of reference to a public hearing ensures that the protocols in the deleted sentence are covered.

³³ Suggested change of words parallels the language used in the similar step of Subpart 3, Item E.

- Revisor corrections shown in blue.

(1) If the board accepts an application for a modification or removal request, board staff must notify the applicant and the Department of Administration within 14 calendar days of the board's vote accepting the application for further review.

(2) If the board rejects an application for modification or removal request for failing to meet one or more of the conditions set forth in subpart 6, board staff must notify the applicant in writing within 14 calendar days of the board's vote rejecting the application and provide the applicant with the reasons for the rejection.

- Revisor corrections shown in blue.

2400.2703 SUBP. 7F – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDING OF FACT 235 - FOOTNOTES 280-283)

F. **Commemorative Artwork Review Committee.** After the board accepts an application requesting modification or removal of an artwork ~~is accepted~~ for further review, the board must convene a commemorative artwork review committee to review the artwork identified in the modification or removal request ~~and the committee to review the artwork~~ applicant's proposed plan for modification or removal identified in the modification or removal³⁴ request. The commemorative artwork review committee must

include the following members ~~appointed by the chair of~~³⁵ the board:

- (1) one board member;
- (2) one architectural adviser;
- (3) one person appointed by the commissioner of the Department of Administration to represent the agency;
- (4) a representative from the Minnesota Historical Society;
- (5) two professionals appointed by the board experienced in the fields of visual art, public art, art history, architecture, or history. One of the professionals must have knowledge of artwork conservation;
- (6) two members of the public appointed by the board;
- (7) up to five additional committee members appointed by the board as needed for ~~professional technical~~ expertise; and
- (8) board staff to oversee and support the committee's work.

³⁴ Suggested revisions refer to the modification or removal plans to be required under the proposed definitions for “modification request” and “removal request”. It is responsive to ALJ report finding #248 recommending that design of modification or removal be reviewed by the board.

³⁵ Suggested change is something that CAAPB staff should have caught in previous reviews of the rules text. The duty of appointing members to advisory task forces or committees falls to the board, not the board chair alone. See MN Statute 15.014, subd. 2. regarding board appointment of advisory task force members.)
- Revisor corrections shown in blue.

2400.2703 SUBP. 7G – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDINGS OF FACT 235, 246-248 - FOOTNOTES 285-291)

G. **Second Public Comment Period.** The commemorative artwork review committee must open a ~~second~~ 30-day public comment period and hold at least one public meeting hosted or cohosted by board staff to gather additional input regarding the proposed modification or removal request, ~~design or disposition plans for the artwork, and any restoration plans of the removal or modification site identified by the Department of Administration in item H, subitem (6),~~³⁶ to determine if the request satisfies the criteria for modification in subparts 5 and 8, or the criteria for removal ~~set forth~~ in subparts ~~8 or~~ 9. The committee must give timely written notice of the public meeting ~~(s)~~ to the applicant requesting modification or removal of the artwork, and to the artist or original sponsor, ~~of the artwork at issue or, if that is not possible, a representative of the artist and original sponsor of the subject artwork. If the committee is unable to notify the artist or original sponsor, the committee must notify a representative of the artist or original sponsor of the subject artwork as long as the board is able to reasonably identify a representative of the artist or original sponsor. If such representatives can be reasonably identified. The committee must provide~~ the applicant, the artist, the original sponsor, and any

representative of the artist or original sponsor, all parties, if such representatives can be reasonably identified and any representative of the artist or original sponsor, all parties the opportunity to speak at the public meeting(s) of the commemorative artwork review committee.

³⁶ Suggested word additions above relate to proposed language revisions to the definitions for "modification request" and "removal request," and are responsive to ALJ recommendation in report finding #248 that *"the Board should address, in some way, the review and approval of modification and removal plans."*

- Revisor corrections shown in blue.

H. **Background Report.** Prior to a the public meeting of the commemorative artwork review committee, the board executive secretary must prepare and post on the board website a commemorative artwork background report that includes:

- (1) a written description and images of the artwork that is the subject of the modification or removal request, information about and images of the artwork's location, and a warranty of the originality of the artwork;
- (2) the origin, derivation, history, and past ownership of the artwork; the original acquisition method and purchase price; and the original intent of the artwork by the artist or organization that advanced the artwork;
- (3) a summary of the proposed modification or removal request and the applicant's stated reasons therefore; the primary concept and design elements of the modified or removed artwork and of the surrounding site,³⁷ and stated reasons therefor; and in the case of a modification request, a recommendation on whether a designer or design consultant is needed to prepare a detailed plan of the modification; and

³⁷ Suggested words are responsive to ALJ recommendation in report finding #248 that *"the Board should address, in some way, the review and approval of modification and removal plans."*

- Revisor corrections shown in blue.

- (4) an analysis of the proposal's potential impact on the Capitol's commemorative artwork collection; and
- (5) a recitation of the criteria for modification in subparts 5 and 8, or for removal set forth in subparts 8 and 9 that the board must use in reaching its decision to grant or deny a modification or removal request;
- (6) a memorandum from the Department of Administration on implementation considerations of the proposed modification or removal plans and any restoration of the removal or modification site, pursuant to Minnesota Statutes, section 15B.15, subdivision 2, paragraph (a); and
- (7) a memorandum from the Minnesota Historical Society evaluating impacts of the proposed modification or removal on the historic context and resources of the Capitol grounds and the State Capitol building, pursuant to Minnesota Statutes, section 15B.34, clause (3).³⁸

³⁸ Suggested addition of ALJ report findings #6 and #7 is responsive to ALJ report findings #242 and #243, which note the statutory roles of the Department of Administration and the Minnesota Historical Society in activities related to artworks and changes to the Capitol grounds. Adding the requirement for a memo from each agency in the Background Report ensures that the departments have an opportunity to provide input early in the request evaluation process.

- Revisor corrections shown in blue.

I. **Committee Meeting.** Board staff must provide the commemorative artwork background report to the commemorative artwork review committee prior to the committee's meeting and may present the report at the committee's public meeting. Each committee member must present the committee member's views and participate in the discussion during the public meeting. The committee shall vote and make a written recommendation to the full board on whether the board should grant or deny the modification request based on the criteria in subparts 5 and 8, or grant or deny the removal request based on the criteria set forth in subparts 8 and 9. A committee recommendation to grant a modification request must include a recommendation on whether additional design work or a designer is needed to prepare a detailed modification plan.³⁹ A majority vote of the committee is required for the committee to recommend granting the modification or removal request.

³⁹ Suggested words are responsive to ALJ recommendation in report finding #248 that *"the Board should address, in some way, the review and approval of modification and removal plans."*

- Revisor corrections shown in blue.

2400.2703 SUBP. 7J – AMENDED AS RECOMMENDED

(FINDING OF FACT 235)

J. **Final Report to the Board.** Along with the committee's recommendation to the board, the board executive secretary must prepare for the board and post to the board website a report that includes:

- (1) a summary of the public comments received at the public meetings and hearings and any additional information obtained during the application review process;
- (2) opinions gathered from committee experts or other independent professionals, such as conservators, engineers, architects, critics, and safety experts who are professionally qualified to comment on the artwork and on the concern prompting review that, which are obtained during the application review process;
- (3) an evaluation of the need for additional design work and the need for forming a design review group and using the selection process under subpart 3, item K; and⁴⁰
- (34) a detailed budget for all aspects of the modification or removal request and the applicant's stated options for funding the request.

- ⁴⁰ Suggested addition of step (3) is responsive to ALJ report finding #246 which notes that there is an absence of a design review process for modifications, such as that used for the design of new artworks, and that a design review process for modifications should be identified in some manner. The suggested language for this new step requires that a recommendation be made to the board on whether the proposed modification is significant enough to warrant design expertise and review. In which case, the design process would follow the relevant steps in Subpart 3, Item K.
- Revisor corrections shown in blue.

2400.2703 SUBP. 7K – AMENDED AS RECOMMENDED

(FINDING OF FACT 235 - FOOTNOTES 300-307)

K. **Board Final Decision.** After receiving the committee’s recommendation and staff final report, the board must determine if another 30-day public comment period or public hearing is necessary to gather additional input. If the board determines that another opportunity for public comment or a public hearing is necessary, then the board shall make a final decision shall occur once after the additional public comment period or public hearing is complete. ~~have occurred.~~ If the board determines that no additional comment period or public hearing is needed, the board shall proceed to reach a decision by holding a public meeting at which the board shall a vote to grant or deny the request for modification or removal shall be taken. The board must apply the criteria in subparts 5 and 8 and 9 when considering whether to grant or deny a request for modification. The board must apply the criteria in subpart 9 when considering whether to grant or deny a request for removal. ⁴¹ A majority vote of the full board is required to grant a request for modification or removal of an existing commemorative artwork. If the board grants a modification request and decides that additional design work in necessary according to subpart 3, item K, the board shall reconvene for final design review and approval as described in subpart 3, item N. ⁴² After making a decision concerning the request for modification or removal, the board must send a written copy of the board’s decision to the applicant and the artist and original sponsor of the artwork at issue, or their representatives as provided in item paragraph G of this subpart.

⁴¹ Suggested additions clarify which subparts apply to modification and removal respectively.

⁴² Suggested sentence notes that the board will require another round of review and approval if a design review process for substantial modifications is undertaken, as noted in subpart 7, item J.

- Revisor corrections shown in blue.

2400.2703 SUBP. 7L – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION

(FINDING OF FACT 259 - FOOTNOTE 310)

L. **Project Costs.** If the board grants a request for modification or removal, but before implementation of the project begins, the applicant must deposit with the Department of Administration enough money to complete the modification or removal consistent with the estimated budget, including any costs for restoration of the removal or modification site identified by the Department of Administration in item H, subitem (6) to restore the area of removal,⁴³ or demonstrate that public funding for the full project is committed. by the legislature or other public body.⁴⁴ Board staff ~~are~~ shall be available to provide testimony to the legislature but shall may not directly raise money to fund the project.

⁴³ Suggested change makes clear that costs apply to work associated with site modification, in addition to removal, since Subp. 7 addresses both modification and removal.

⁴⁴ Suggested removal of reference to public funding and legislative funding, for the reason that private or philanthropic money has been the predominant source of funding for commemorative works on the MN Capitol grounds to date. This historical funding precedent is expected to continue. Public funding is sought to supplement the project budget when appropriate and expedient.

- Revisor corrections shown in blue.

2400.2703 SUBP. 7M-7N – **AMENDED AS RECOMMENDED TO ADDRESS DISAPPROVAL**, WITH SUGGESTED MODIFICATION

(FINDINGS OF FACT 249 AND 250 - FOOTNOTE 313)

M. **Granting and Implementation of Modification Requests.**⁴⁵ If the board grants a request to modify an existing commemorative artwork on Capitol grounds and approves of the final schematic design and design development, the project shall proceed with construction documents and bidding under the Department of Administration. Board staff and architectural advisers, a designer if applicable, and a Department of Administration project manager must form a working group to monitor implementation of the modification work. The board executive secretary is authorized to review construction documents for consistency with the schematic design and design development approved by the board. A designer, if involved, must enter into a contract with the Department of Administration that includes a project timeline and budget.⁴⁶ ~~The board must work with the Department of Administration pursuant to Minnesota Statutes, section 15B.15, subdivision 2, paragraph (a), and the Minnesota Historical Society pursuant to Minnesota Statutes, section 15B.34, clause (3).~~⁴⁷

⁴⁵ Suggested revision of title signals that this item addresses both approval and implementation. It is responsive to ALJ report finding #247 which states that Subpart 7 lacks a process *...for overseeing how the modification or removal is orchestrated.* (This suggested modification is mute based on Revisor's removal of item titles.)

⁴⁶ Suggested additions outline basic steps for the implementation of approved

modification plans. It is responsive to ALJ report finding #248 which states, *“the Board should address, in some way, the review and approval of modification and removal plans...”*

⁴⁷ Suggested relocation of the last sentence – it removes it from Subpart 7, Item M and adds it to Subpart 7, Item H (6) and (7).

N. **Granting and Implementation of Removal Requests**. If the board grants a request for the removal of a commemorative artwork on Capitol grounds, the removal must proceed in accordance with the disposition plan described in the request. The Minnesota Historical Society must determine the final disposition of the artwork pursuant to Minnesota Statutes, section 138.68. The Minnesota Historical Society reserves the first right of refusal for removed artwork of historic value. If the Minnesota Historical Society does not accept the artwork, the artwork's disposition must be determined according to Minnesota Statutes, section 138.68. The disposition work must proceed with construction documents and bidding under the Department of Administration. ⁴⁷

⁴⁷ Suggested additions are similar to those made in Subpart 7, Item M, but specific to removals instead of modifications.
- Revisor revision shown in blue text.

2400.2703 SUBP. 8A-8K – **AMENDED AS RECOMMENDED TO ADDRESS DISAPPROVAL** WITH SUGGESTED MODIFICATION

(FINDING OF FACT 255)

Subp. 8. **Criteria for modification of an existing artwork.** The board must consider and apply ~~all the following the~~ criteria ~~in items A to N~~ to evaluate ~~a~~ requests for the modification of an existing commemorative artwork:

- A. the proposed modification makes the artwork more welcoming and engaging to nearby and statewide communities;
- B. the proposed modification embraces historical facts and fosters a productive range of responses, conversations, and interpretations;
- C. the proposed modification considers the social and cultural conditions at the time of the artwork's addition;
- D. the proposed modification prompts reflection, conversation, and awareness of the stories, perspectives, and experiences of historically marginalized or oppressed communities;
- E. the proposed modification incorporates the views of all interested groups and individuals and considers s the relationship of these groups' collective history, heritage, and values to the artwork;
- F. the proposed modification creates an opportunity to increase public understanding of and dialogue about Minnesota's history;
- G. the proposed modification enhances the artwork's function as a source of collective identity and belonging for all Minnesotans;
- H. the proposed modification generates, contributes to, or enhances existing social activity in the surrounding public space;
- I. the proposed modification represents or commemorates a significant event, group, or individual in Minnesota's history;
- J. the proposed modification respects the contributions and perspectives of the artwork's creators and the group or individuals depicted in the artwork and the group's or individuals' communities;
- ~~K~~. the proposed modification seeks to achieve peace, reconciliation, truth, or justice for individuals, groups, and communities that are not represented or who are misrepresented in the artwork;

L. the proposed modification acknowledges evolving social values and accounts for the views and needs of the contemporary community;

M. the proposed modification meets the criteria of subpart 5; and ⁴⁸

N. funding is available to pay for the proposed modification and any restoration of the modification site identified by the Department of Administration in subpart 7, item H, subitem (6). ⁴⁹

⁴⁸ Suggested language references subpart 5 where there is potential new criteria for modification or removal plans. This is responsive to ALJ report finding #248 recommendation that *"the Board should address, in some way, the review and approval of modification and removal plans."*

⁴⁹ Suggested language is responsive to ALJ report finding #256, suggesting that the board evaluate funding as one of the criteria.

2400.2703 SUBP. 9 – AMENDED AS RECOMMENDED, EXCEPT SUGGESTED MODIFICATION
(FINDING OF FACT 259 - FOOTNOTE 326)

Subp. 9. **Criteria for evaluating removal of an existing commemorative artwork.** The board must consider and apply criteria in items A to M the following criteria to evaluate a request for the removal of an existing commemorative artwork:

- A. community feedback about the artwork, the artwork's site, and the artwork's condition collected at public meetings and hearings;
- B. the degree to which the artwork misrepresents the state's history or has the effect of significantly intimidating or adversely affecting a group of people;
- C. the method by which the artwork was acquired and accessioned in the commemorative artwork collection, such as by donation, loan, or commission;
- D. the qualifications and professional reputation of the artist, and the artwork's craftsmanship, conceptual content, style, and form;
- E. the availability of necessary funding for conservation, maintenance, and repair of the artwork if the artwork remains in its current location; the availability of exhibition ~~or and~~ storage space for relocating if the artwork ⁵⁰ is removed; and the disposition of the artwork in accordance with Minnesota Statutes, section 138.68. regarding disposition of artwork; availability of real property for siting the artwork if it is removed. ⁵¹

⁵⁰ Suggested revisions throughout item E are intended to provide clarity and address

ALJ report footnote #326 *"This provision [Subpart 9, Item E] needs clarity. As written, it is unduly vague and subject to multiple interpretations."* Reference to the availability of real property was proposed in an early version of the rules, is confusing and is not essential to the item, since exhibition or storage space inherently include real property.

⁵¹ The added reference to section MN Statute section 138.68 is important since it governs the matters described in item E.

F. the degree to which removal of the artwork would detract from the overall artistic and architectural integrity of the Capitol or Capitol area;

G. the artwork's style, form, scale, diversity, quantity, quality, longevity, and compatibility with the existing commemorative artwork collection;

H. accessibility, public safety, and the social, cultural, historical, ecological, physical, and functional context of the artwork in relation to the site, both existing and planned;

I. issues related to liability, insurance, intellectual property rights, warranties, ownership, theft, vandalism, loss, indemnification, and public safety;

J. safety, the avoidance of emergencies caused by hazards, and construction schedules;

K. the value of the artwork as determined by a professional appraiser;

L. the plan for returning the space left by removal of the artwork to [the space's-its](#) original condition or a condition that is aesthetically consistent with the surrounding Capitol grounds; and

M. the availability of funding to pay for the removal and [any](#) restoration of the removal site [identified by the Department of Administration in subpart 7, item H, subitem \(6\)](#).

- Revisor corrections shown in blue.

2400.2703 SUBP. 10 – SUGGESTED MODIFICATION FROM THE REVISOR

Subp. 10. Public hearing and public meeting requirements.

A. At least 30 days before a public hearing date under subpart 3 or 7, the board must:
(1) post a notice of the public hearing on the board's website;
(2) mail a notice of the public hearing to the applicant; and
(3) mail a notice of the public hearing to any other party requiring notice under this part.

B. Public meetings held under this part must comply with Minnesota Statutes, chapter 13D.

C. The host for a public meeting under this part may be the board or any public, private, nonprofit, or community entity.

D. The organization and management of a public meeting under this part shall be determined by the host in collaboration with board staff.”⁵²

⁵² The Revisor added subpart 10 to identify required steps to occur in advance of a CAAPB hearing on commemorative works. The Revisor felt that this type of substantive information didn't belong in definitions or other subparts and should stand on its own. The content of subpart 10 is based on the following intent and rationale:

- (1) It is important that public meetings engage the public to encourage open conversation and feedback. It is the experience of CAAPB staff, and of planning and engagement professionals in general, that public engagement is sometimes most successful when conducted in a neutral setting that is somewhat informal and easy to access. People are more likely to attend meetings and provide input if the meeting is hosted by someone or some entity they know, is in a convenient location, and if the meeting is designed to encourage conversation between the attendees and the hosts. Some people are uncomfortable or dislike attending meetings hosted by a government entity or its designee. Since the board wants widespread public engagement and input on commemorative works and other topics it covers, it is best served by allowing some flexibility in the who, how, and where of public meetings.

2400.2705 STANDARDS FOR CIVIC AND INSTITUTIONAL USES.

Subpart 1. **Monuments, memorials, and commemorative works artwork.** Monuments, memorials, and commemorative works artwork structures must be approved for placement under, modification, or removal according to part 2400.2703 and Minnesota Statutes, section 15B.05, subdivision 3.

~~A. All commemorative works for the Capitol area must meet the following objectives:~~

- ~~(1) to preserve the integrity of the Capitol area;~~
- ~~(2) to ensure that such works are appropriately designed, constructed, and located;~~
- ~~(3) to maintain the dignity of existing memorials;~~
- ~~(4) to ensure that the subject is of lasting significance to the people of the state;~~

- ~~(5) to reflect the diversity of the state's people and culture, yet not be partisan in nature; and~~
- ~~(6) to provide an enriching experience that illuminates underlying values and broadens understanding of the state's heritage and culture.~~

~~B. The commemorative work must be consistent with and meet the conditions of the following board documents:~~

- ~~(1) Comprehensive Plan for the State Capitol Area, 1998, as amended in 2009;~~
- ~~(2) Specific Actions for Implementation of the Comprehensive Plan for the State Capitol Area, February 1998; and~~
- ~~(3) Commemorative Works in the Capitol Area: A Framework for Initiation, Evaluation and Implementations of Commemorative Works in the Capitol Area, May 1993.~~

~~These documents are incorporated by reference and are available at the board's office and website and the State Law Library. They are not subject to frequent change.~~