



CAPITOL AREA ARCHITECTURAL AND PLANNING BOARD

CAAPB

STATEMENT OF NEED AND REASONABLENESS

Proposed Revisions to Minnesota Rules Chapter 2400,
governing Commemorative Works on the Minnesota
Capitol Grounds
Revisor ID No. 04720

Capitol Area Architectural and Planning Board
February 2020

General Information

1. Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the [Capitol Area Architectural and Planning Board's website](#). The SONAR available for public review beginning February 7, 2022.
2. View older rule records at the [Minnesota Rule Statutes website](#).
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Merritt Clapp-Smith, CAAPB Executive nu U.S. mail at 204 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155; by telephone at 651-757-1500 / 1-800-627-3529; or by email at merritt.clapp-smith@state.mn.us.
4. How to read a Minnesota Statutes citation: Minn. Stat. § 15B.32, subd. 6(a)(1) is read as Minnesota Statutes, section 15B.32, subdivision 6, paragraph (a), clause (1).
5. How to read a Minnesota Rules citation: Minn. R. 2400.2705, subp. 1(A)(1) is read as Minnesota Rules, part 2400.2705, subpart 1, item A, subitem (1). Minn. R. 2400.2705 if found in Minnesota Rules, Chapter 2400.

Table of Contents

ACRONYMS/ABBREVIATIONS	5
1. INTRODUCTION AND OVERVIEW	6
A. INTRODUCTION	6
B. SCOPE OF THE PROPOSED AMENDMENTS	6
2. STATEMENT OF GENERAL NEED.....	7
3. BACKGROUND	8
A. CAPITOL AREA ARCHITECTURAL AND PLANNING BOARD	8
B. AUTHORITY AND RULES FOR MONUMENTS, MEMORIALS AND ARTWORKS.....	8
C. GAP IN RULES FOR MODIFICATION OR REMOVAL OF EXISTING WORKS	9
4. PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT	10
A. PUBLIC ENGAGEMENT TASK FORCE	10
B. DECISION PROCESS ADVISORY TASK FORCE	11
C. OTHER FORMS OF ENGAGEMENT	14
CAAPB Website	14
Board Meetings.....	14
Media	14
ADMIN and MNHS.....	14
5. STATUTORY AUTHORITY	15
6. REASONABLENESS OF THE AMENDMENTS	16
A. GENERAL REASONABLENESS	16
There are four primary goals of the proposed rules update, and each is reasonable.	16
B. SPECIFIC REASONABLENESS / RULE-BY-RULE ANALYSIS.....	19
2400.2040 Definitions	19
2400.2703 Standards for Commemorative Artwork.....	20
2400.2705 STANDARDS FOR CIVIC AND INSTITUTIONAL USES.....	29
7. REGULATORY ANALYSIS.....	30
A. CLASSES OF PERSONS	30
B. PROBABLE COSTS TO AGENCIES	31
C. LESS COSTLY OR INTRUSIVE METHODS	32
D. ALTERNATIVE METHODS CONSIDERED	32
E. COST OF COMPLIANCE FOR AFFECTED PARTIES.....	34
F. COSTS OR CONSEQUENCES OF NOT ADOPTING.....	34
G. DIFFERENCES FROM FEDERAL REGULATIONS	34
H. CUMULATIVE EFFECT WITH OTHER REGULATIONS	35
8. ADDITIONAL NOTICE PLAN.....	36
A. REQUIRED NOTICE	36
Request for Comments	36
Remaining required notifications.....	37
B. ADDITIONAL NOTICE.....	38
9. CAAPB-SPECIFIC STATUTORILY REQUIRED ANALYSIS.....	42
A. PERFORMANCE-BASED RULES.....	42
B. CONSULT WITH MMB ON LOCAL GOVERNMENT IMPACT	42
C. IMPACT ON LOCAL GOVERNMENT ORDINANCES AND RULES	42
D. COSTS OF COMPLYING FOR SMALL BUSINESS OR CITY	42
E. IMPACT ON FARMING OPERATIONS	43

10. AUTHORS, WITNESSES, AND SONAR EXHIBITS44
A. AUTHORS44
B. WITNESSES44
C. SONAR EXHIBITS44
11. CONCLUSION45

Acronyms/Abbreviations

ADMIN - Minnesota Department of Administration

APA - Administrative Procedure Act

ALJ - Administrative Law Judge

CAAPB - Capitol Area Architectural and Planning Board, an agency of the State of Minnesota

CAAP Board - The 12-member Board of the CAAPB

Comp Plan - 2040 Comprehensive Plan for the Minnesota Capitol Area

Minn. R. - Minnesota Rules

Minn. Stat. - Minnesota Statutes

MMB - Minnesota Management and Budget

MN - Minnesota

MNHS - Minnesota Historical Society:

MORS - Minnesota Office of the Revisor of Statutes

OAH - Office of Administrative Hearings

SONAR - Statement of Need and Reasonableness

1. Introduction and Overview

A. Introduction

The Capitol Area Architectural and Planning Board is responsible for long-term planning and zoning decisions in the Capitol Area. It is also responsible for making decisions about changes or improvements to commemorative works in the Capitol Area and on the Capitol Mall. Commemorative works are monuments, memorials, or other artworks that commemorate a person, group, event, place, or topic.

In June 2020, a wave of civil unrest and awakening swept the country and the world following the killing of George Floyd. In its wake, monuments and memorials were vandalized or removed, legally or illegally, from public spaces in numerous states and other countries. View a list of [removed monuments and memorials on Wikipedia](#).

The State entity responsible for decisions on commemorative works on the Capitol grounds is the Capitol Area Architectural and Planning Board (CAAP Board). After the illegal toppling of the Columbus statue, some questioned why a legal path to request its removal by the State had not been pursued.

The CAAP Board met on June 25, 2020 and discussed its statutory authority for review and decisions on commemorative works at the Minnesota Capitol grounds under Minnesota Statutes, chapter 15B, and Minnesota Rules, part 2400.2705. It acknowledged that the existing rules and procedures only addressed the addition of new commemorative works. No existing process was identified that enabled people to petition or apply for the modification or removal of existing works.

Following this discussion, the CAAP Board voted on June 25, 2020, to create two advisory task forces:

1. **The Public Engagement Task Force:** to establish a proactive, transparent, and public process to evaluate public opinion about commemorative works on the Capitol grounds and what they convey about Minnesota, its history, and its people.
2. **The Decision Process Advisory Task Force:** to consider updates to the process for adding new works, and the potential of a new policy to address requests for modification and removal of existing works.

The proposed rules described in this SONAR is the culmination of the task forces' work and related activities conducted between July 2020 and November 2021.

B. Scope of the proposed amendments

The proposed rule changes affect Minnesota Rules, chapter 2400, specifically by:

- adding new definitions to part 2400.2040;
- repealing part 2400.2705; and
- adding a new part 2400.2703, Standards for Commemorative Artwork.

2. Statement of General Need

The Capitol Area Architectural and Planning Board (CAAPB) has rules governing the process and standards for the addition of monuments, memorials, and commemorative works on state-owned property in the 60-block geography of the Capitol Area. However, it has no process nor rules governing the modification or removal of monuments, memorials, and commemorative works on state-owned property in the Capitol Area.

The proposed rules amendments would establish a process by which Minnesotans can legally apply to request the modification or removal of a specific monument, memorial, or commemorative artwork, and the standards and process by which the Capitol Area Architectural and Planning Board would determine the merit of the request for approval or denial.

An update of Minn. R. 2400 is compelled by recent adoption of an updated Comprehensive Plan for the Minnesota State Capitol Area. Minn. R. 2400 implements the statutory responsibilities of the CAAPB under the direction of the Comprehensive Plan, as further described in Section 6, part 4.A. on page 18 of this SONAR. The following excerpts from the 2040 Comprehensive Plan for the Minnesota State Capitol Area articulate the importance of the Capitol grounds for visitors, and in shaping the identity of Minnesota and its people. The Comprehensive Plan acknowledges the mixed messages of current works collection and the need to consider changes to it.

“The Capitol as Minnesota’s Common Ground. ... the Capitol Building and grounds are both a grand achievement and an exciting work in progress. It is a place designed with the goal of bringing Minnesotans together to learn about, discuss and celebrate our shared values and our differences. As the state has changed, Minnesotans have always cared that this is a place that reflects Minnesota values.”

“At the same time, it is also true that for some Minnesotans (including many native and many new Minnesotans who are immigrants), the same soaring white marble dome of the Capitol Building can have an imposing, or additional less-welcoming meanings that go beyond the symbolic warm welcome adorned by the high ideals of freedom and democratic self-government. To some, these forms also symbolize the unintended/unconscious bias connected to ongoing or past displacement or oppression, government excesses or the control by the powerful. To others, the details of western classical architecture are simply not as familiar or comforting, despite the varied intents of the leaders that commissioned the work over a century ago. An example of this is the growing understanding that memorials and commemorative artworks in the building and on the Mall can express multiple histories depending on the viewer.”

“Time and events change attitudes, people, and their values—and the ongoing discourse about these realities has increased recently. A survey of Mall visitors in the fall of 2019 indicated that approximately 90% of people surveyed were very happy with the experiential aspects of the memorials on the mall, but less than half of the people felt that the memorials connected to their lives (38%) or current events (41%). Approximately 30% of the people surveyed indicated they would like to see more diverse representation of Minnesotans, including women, native communities, communities of color and other traditionally under-represented groups.” – 2040 Comprehensive Plan for the Minnesota State Capitol Area, pages 36-38

3. Background

A. Capitol Area Architectural and Planning Board

Minnesota Statutes, chapter 15B, establishes the Capitol Area Architectural and Planning Board, its purpose, and its duties. The Capitol Area Architectural and Planning Board (CAAPB) is responsible for long-term planning and zoning decisions in the Capitol Area. It is also responsible for making decisions about changes or improvements to commemorative works on the Capitol grounds. Under statute, the Board is composed of twelve members and chaired by the Lieutenant Governor. Four members are appointed by the Governor, three members appointed by the Mayor of Saint Paul, two members appointed by the President of the Senate, and two members appointed by the Speaker of the House of Representatives. The statute further establishes an Advisory Committee of three architectural and landscape design professionals who must advise the Board on all architectural, planning, and landscaping matters in the Capitol Area. Staff to the Board must include a Zoning Administrator and an Executive Director. The Board meets at the call of the Chair, typically every two to three months.

B. Authority and Rules for Monuments, Memorials and Artworks

Within chapter 15B, section 15B.03, subd. 6, grants the CAAPB rulemaking authority, and section 15B.08, subd 3, grants the CAAPB decision-making authority over commemorative works: *“No substantial change or improvement may be made to public lands or public buildings in the Capitol Area without the written approval of the board.”* “Substantial changes or improvement” include those made to public buildings, statuary or other memorials or public art, and significant above-ground alterations to public open spaces and roadways.

Minnesota Rules, chapter 2400, regulates zoning, land use, design, construction, and other activities in the 60-block Capitol area (boundaries are defined in Minn. Stat. § 15B.02). The primary purpose of the Board is *“to protect and enhance the dignity, beauty and architectural integrity of the area.”*

The CAAPB’s zoning rules—provided under Minn. Stat. § 15B.06—regulate *“the kind, character, height, and location of buildings and other structures”* and *“the uses of land, buildings, and other structures.”* The zoning rules may also include *“standards and design-review procedures for proposed construction in the Capital Area that significantly affect the area’s dignity, beauty, and architectural integrity.”* An example of construction is a monument (Minn. Stat. § 15B.05, subd. 5(4)).

Minnesota Rules, part 2400.2705, subp 1, addresses existing rules for commemorative works on the Minnesota Capitol grounds. The text in subps. 1 and 1.A. is brief, and subp. 1.B. incorporates by reference the document: *Commemorative Works in the Capitol Area: A Framework for Initiation, Evaluation, and Implementations of Commemorative Works in the Capitol Area*. This document was updated in 2012 and retitled Policy for Commemorative Works in the Minnesota State Capitol Area ([SONAR Exhibit 1](#), but the new title was not amended into the rules).

The current rules and referenced policy documents only address the addition of new works. They provide no formal process to consider potential modification or removal of monuments and artwork on the Capitol Grounds.

C. Gap in Rules for Modification or Removal of Existing Works

The existing CAAPB standards and procedures for commemorative works are described briefly in MN Rules 2400.2705, and then “incorporates by reference” the detailed commemorative works policy document. This document describes objectives for commemoration, site selection criteria, design criteria, and procedures for initiating and implementing works, but only for new works to be added. There is no description of objectives, criteria, or process for modification or removal. There is one reference in the Objectives section that contemplates change to an existing work, “6) that existing commemoratives within the Capitol Area found incompatible with CAAPB objectives and Comprehensive Plan policies may be considered for relocation,” but there is no further reference or information that outlines how this would be initiated, reviewed, or implemented. Nevertheless, it indicates that CAAPB has considered the issue of the modification and removal of commemorative works for at least a decade, since the policy was last updated.

When the CAAP Board met on June 25, 2020, to discuss its authority and procedures to review commemorative works, it agreed that the existing rules and referenced policy did not provide a means for people to apply or petition for modification or removal of existing works, nor for the Board to review such petitions. The Board determined that the gap in its rules should be addressed and passed a resolution creating two advisory task forces to begin the work.

4. Public Participation and Stakeholder Involvement

“State-Wide Initiative in 2020: Hearing the Voices of All Minnesotans. Following important events in 2020, the CAAPB, working together with Minnesota Historical Society and the Administration Department, have launched inter-related policy and public engagement initiatives aimed at ensuring that all Minnesotans have a voice in decisions made about commemorative art on the Capitol Mall and in the Capitol Building. The resulting recommendations may further strengthen (or change) the policies of this plan.” – 2040 Comprehensive Plan for the Minnesota State Capitol Area, page 40

The excerpt above from the Comprehensive Plan, adopted in March 2021, refers to CAAPB’s June 2020 initiation of the Public Engagement Task Force and the Decision Process Advisory Task Force.

The focus of these groups was to establish a proactive, transparent, and public process for evaluating public opinion regarding commemorative works on the Capitol grounds and their representation of Minnesota history, as well as to consider potential changes to address requests for modification and removal of existing works. The activities of each group are described in A. and B. on the following pages.

A. Public Engagement Task Force

This group created space for the public to share experiences about what the Capitol means to them and provide feedback on the monuments, memorials, and works of art on the Capitol Grounds and in the interior of the State Capitol.

The Public Engagement Task Force met and conducted public engagement from February 2021 to May 2021. Engagement occurred in several ways:

1. four meetings of the task force;
2. three hundred and forty-five responses to an online survey that asked 24 questions designed by State of Minnesota staff in consultation with the Task Force; and
3. twenty-five community listening sessions with a diverse set of groups across the State of Minnesota, which engaged 200 people.

The input gathered was analyzed, organized, and summarized in a 44-page [Report of the Public Engagement Task Force on Commemorative Works](#) and released publicly in early November 2021.

The perspectives collected by the Task Force reflect the undercurrent of Minnesota’s present reality: it is changing. The tension between what it has been and what it is now is evident in the responses to virtually every question posed to participants, with contradicting feedback on what is working and what is missing and an abundance of unrelated comments that show frustration, anger, and calls for recognition and respect. Despite the heightened cultural and partisan divide defining the time during which this work took place, several key themes are identifiable across the responses:

1. **Respondents are proud of the Capitol**, with a great quantity of comments referring to its awe-inspiring beauty and grandeur, excitement over meeting and interacting with legislators, and a love of showing it off to visitors from out of town.

2. **Respondents feel that their communities are not reflected in the art, monuments, and memorials at the Capitol.** They give an impression of being stuck in time, exclusive of women and Black, Indigenous, Latinx, Asian, LGBTQ+, immigrant, and disability communities.
3. **Most respondents (57%) feel unwelcome at the Capitol** because of ongoing displays that perpetuate harmful stereotypes, the feeling they have when they enter of going into “combat” for their rights, or the sense that if they do not have legislative business, they should not be there.
4. **A clear majority of respondents (70%) think change is important in the mix of art, monuments, and statues** in and around the Capitol, to be more representative and inclusive of Minnesota’s full history and diverse peoples.
5. **Respondents are divided on how to handle the art and statues on display**, with many asking for current works to be preserved with added context provided to create learning opportunities and show the progress the state has made. Others point to painful depictions, complete invisibility in representation, and exclusion from decision-making processes. They ask powerful questions that can guide CAAPB’s consideration of commemorative works:
 - *How can we use the Capitol as a place to tell Minnesota’s story more completely?*
 - *How do we ensure that all Minnesotans are better represented?*
 - *What commonalities do Minnesotans share that can make the Capitol truly the People’s House?*
 - *What should the art, monuments, and memorials tell future generations?*

“I would love to see more representation of people who look like me and who fought for my freedom and not people who likely fought against my freedom.”-Respondent to CAAPB survey on commemorative works

B. Decision Process Advisory Task Force

The Decision Process Advisory Task Force was tasked with conducting a comprehensive review and consideration of CAAPB policies and procedures for addition, modification, or removal of monuments, memorials, and works of art on the Capitol grounds and in the Minnesota State Capitol building. However, after some discussion of the shared jurisdiction of CAAPB and the Minnesota Historic Society for decisions on the Capitol building, the task force narrowed its focus to policies and procedures for artworks on the Capitol grounds where CAAPB has sole jurisdiction. The Task Force provided the recommendations included in this report on how to best develop a decision-making process regarding the addition, alteration, or removal of monuments, memorials, and works of art on the Capitol Grounds. From October 2020 to May 2021, the Decision Process Advisory Task Force met 12 times, in a series of six, two-part meetings. These Decision Process Advisory meetings were live-streamed and recorded and are available for viewing on [the CAAPB website](#).

The Decision Process Advisory Task Force intentionally included individuals representing different backgrounds, careers, expertise, cultural experiences, and points of view. The Task Force members engaged in discussion regarding the current CAAPB Policy on Commemorative Works. They reviewed the language, identified gaps, and generated concepts for an updated Commemorative Artwork policy. To inform their discussions, Task Force members heard presentations from CAAPB Staff, Minnesota Historical Society (MNHS) staff, and the Chair of the CAAPB Public Engagement Advisory Task Force.

The Decision Process Advisory Task Force reviewed the existing rules language and the referenced *Policy for Commemorative Art Works in the Minnesota State Capitol Area (2012)* and identified the following missing elements:

1. opportunities for the review or modification of existing commemorative artwork;
2. a comprehensive list of definitions written in clear language;
3. an accessible web interface with an explanation of the support available to members of the public wishing to engage in the process;
4. clarity around the fiscal obligations of applicants/applicant groups and the state;
5. transparency around the individual or group of individuals responsible for making decisions regarding commemorative artwork; and
6. explicit opportunities for public input regarding commemorative artwork decisions.

Using the gaps identified by the full Task Force for guidance, a subgroup of Task Force members conducted a comprehensive review of local, state, and national policies on commemorative artwork to identify common themes and language. The Subgroup presented the following findings with example language to the full group for review and discussion:

1. Common structural elements across commemorative artwork and public art collection policies included an introduction with policy objectives, values/vision/goals for the collection, a definitions list, and a process for addition, modification, and/or removal.
2. Common structural elements across commemorative artwork policies specific to modification and/or removal included criteria for modification and/or removal consideration, a sequence of action to be taken before modification and/or removal, the methods for modification and/or removal, and the scope of public access to the process.
3. Common procedural elements across commemorative artwork collection policies included a formal removal or modification request, an evaluation and recommendation report, a public hearing regarding the request, and the use of a review subcommittee to evaluate the requests.

Following their review of the current commemorative works policy and the presentations by CAAPB Staff, MNHS Staff, and individual Task Force members, the full Task Force discussed the following elements for inclusion in the proposed Policy for Commemorative Artwork on the Capitol Grounds:

1. a vision statement that aligns language with the vision statements of the CAAPB and the State of Minnesota and upholds inclusivity and shared experience;
2. guiding principles that uphold an accessible public process and embrace the diverse history of all Minnesotans;
3. a comprehensive policy definitions list that is written for everyday Minnesotans;
4. changes to the commemorative artwork addition policy that address the gaps identified by the task force and clarifies the process;
5. a process for the modification or removal of existing commemorative artwork that allows every generation of Minnesotans the opportunity to review and then renew or revise the traditions of honoring that they wish to bring forward;
6. application forms for the addition of new commemorative artwork and the modification and removal of existing commemorative artwork that are straightforward and act as a springboard for public action; and

7. a “Frequently Asked Questions” (FAQ) sheet that answers potential questions regarding the processes for the addition, modification, and removal of commemorative artwork.

Throughout the course of Decision Process Advisory Task Force meetings, the group discussed the following topics regarding both the process for the addition, modification, and removal of commemorative artwork on the Capitol Grounds and the corresponding policy language:

1. permanency and the timeline on which Commemorative Artwork will be considered;
2. power and the creation of a process that is accessible to formal and informal communities of power as well as recognizes of the power that comes with the ability to represent history;
3. transparency in how the CAAPB reviews and makes subsequent decisions on requests for the addition of new commemorative artwork and the modification or removal of current commemorative works;
4. actionable and accessible language to ensure that the public knows how to petition for change;
5. inclusive values and guiding principles that acknowledge that the meaning embedded in commemorative artwork can be understood simultaneously as symbols of pride by one group and as reminders of systematic oppression for others;
6. modification of existing commemorative artwork with the understanding that as times change, there should be a process to reevaluate the context of commemorative artwork;
7. thresholds and conditions for review that uphold consistent and rigorous standards while maintaining public accessibility;
8. periodic review to ensure the proactive evaluation of commemorative artwork against the policy’s guiding principles and evaluation criteria;
9. the makeup of the Commemorative Artwork Review Subcommittee to uphold a process that brings all voices to the table, particularly regarding the removal of an existing commemorative artwork; and
10. the role of the Minnesota Legislature in the decision-making process regarding the addition, modification, and removal of commemorative artwork.

In summary, after twelve public meetings and many conversations, the Decision Process Advisory Task Force drafted updated language for the addition of new works, and new language to address requests for modification or removal. The proposed language was provided to the CAAP Board and staff in the “Policy for Commemorative Artwork on the Capitol Grounds,” a part of the [Decision Process Advisory Task Force report](#), also found as SONAR Exhibit 2. The proposed Policy was envisioned to replace the 2012 Policy referenced in Minn. R. 2400.2705.

The Capitol Area Architectural and Planning Board reviewed the proposed policy (to replace the 2012 Policy) and discussed updating its reference in Minn. R. 2400.2705. After considering options, the CAAPB decided to incorporate the new policy language into the rules of chapter 2400 and dispense with reference to an external document. Consolidating standards and processes for review of commemorative works under Minn. R. 2400 improves clarity and accessibility.

C. Other Forms of Engagement

Engagement conducted by the two task forces was the primary means of gaining public input. The task force engagement was complemented by other outreach activities.

CAAPB Website

Updates on the commemorative works process and activities of the task forces were posted at least monthly on the CAAPB website at <https://mn.gov/caapb/>.

Board Meetings

The topic of commemorative works was addressed at nine (9) meetings of the CAAP Board between November 2019 and December 2021, with at least three (3) more meetings anticipated to address commemorative works rulemaking in the first half of 2022. Exhibit 6 provides the relevant meeting minutes on the topic from the nine meetings. SONAR Exhibit 6 provides excerpts from the Board meetings and is available on the CAAPB website at <https://mn.gov/caapb/>.

Media

Press attention to commemorative works on the Minnesota Capitol grounds swelled when the statue of Columbus was pulled down in June 2020. Exhibit 7 provides a sample of the coverage with a dozen articles that address the commemorative works topic and the CAAPB role in deciding the collection of works on the Capitol grounds. [SONAR Exhibit 7 provides a sample of the press coverage and is available on the CAAPB website at https://mn.gov/caapb/](https://mn.gov/caapb/).

ADMIN and MNHS

Some requirements in the proposed rule reflect the existing collaboration among the CAAPB, ADMIN, and MNHS. This collaboration is mandated by statute. For example, under Minn. Stat. § 15B.15, the commissioner of ADMIN must act as a consultant to the board and do studies for the CAAPB when needed for the CAAPB's planning. Minn. Stat. § 15B.19, subd. 3 and Minn. Stat. § 15B.34(3)) cite the duty of the CAAPB to work jointly with MNHS on plans and specifications for any changes to the Capitol building. The CAAPB values the expertise of MNHS and ADMIN and has consulted with them on past decisions regarding commemorative works. The proposed rules identify points of collaboration with MNHS and ADMIN during review of commemorative work proposals.

5. Statutory Authority

Minnesota Statutes, Chapter 15B establishes the Capitol Area Architectural Planning Board, its responsibilities, and its operation. Section 15B.03, subd. 6, gives the Capitol Area Architectural and Planning Board (CAAPB) the statutory authority to amend and adopt rules, and specifically to establish zoning rules to regulate land use in the Capitol Area under Minn. Stat. § 15B.06, subd. 1(b)):

General rulemaking authority.

“The board may adopt rules under chapter 14, the Administrative Procedure Act, that it believes are needed and reasonable to accomplish the purposes of this chapter.”

All CAAPB rules are set forth in Minnesota Rules Chapter 2400 Capitol Area Architectural and Planning Board Zoning and Design. The rules govern what uses are allowed in the Capitol Area, the form and design of those uses, and the form and design of the land around them.

Under Part 2400.2015 Applicability and Scope:

“No Capitol area building or structure shall be erected, converted, enlarged, reconstructed, or altered, and no Capitol area building, structure, or land shall be used for any purpose that is not in conformity with this chapter.”

Minnesota Rules, part 2400.2200 “General Provisions” for zoning districts states that Permitted and Conditional uses in each district may be subject to “the standards and conditions in parts 2400.2700 to 2400.2740.” In 2400.2205 Commemorative works, monuments, or memorials are listed as a Permitted and Conditional use in every zoning district of the Capitol Area and are subject to standards. Those standards are currently addressed in 2400.2705, Subp. 1.

This rulemaking process is intended to amend, consolidate, and further detail the existing rules on commemorative works, monuments, and memorials.

Minn. Stat. § 15B.05, subd. 3. requires that construction activity in the Capitol area must be consistent with the Comprehensive Plan (Under Minn. Stat. § 15B.05, subd. 5., monuments are a form of construction.) The comprehensive plan for the Capitol Area was recently updated and adopted in 2021. The new Comprehensive plan states that Chapter 2400 rules must be brought into compliance with the current Comprehensive Plan.

“1.10. ...update the Rules Governing Zoning [Chapter 2400] to reflect changes to this Comprehensive Plan and updates to policies regarding Works of Art in the Minnesota State Capitol and Commemorative Works in the Minnesota State Capitol Area.” – 2040 Comprehensive Plan for the Minnesota State Capitol Area, page 42

This rulemaking is specific to commemorative works. A larger rules amendment will be brought forward in the coming years to bring the remaining elements of chapter 2400 into compliance with the 2040 Comprehensive Plan for the Minnesota Capitol Area.

6. Reasonableness of the Amendments

A. General Reasonableness

The proposed rules clarify and update the existing process to consider new works, and they introduce a process by which applicants can request that existing works be considered for reinterpretation, modification, or removal, under a review process with specified steps, standards, and criteria.

The Minnesota Capitol is a showcase for the stories of the state and its people over time, and can bring recognition, representation, and pride to visitors. The current collection of commemorative works on the Capitol grounds represents some chapters in the Minnesota story, while leaving other chapters untold and characters not introduced.

68% of respondents to the CAAPB survey on commemorative works disagreed with the statement: “I understand who makes decisions about monuments, memorials, and works of art at the Capitol.” 72% said they would like to comment on decisions that the CAAPB makes about monuments, memorials, and works of art at the Capitol.

For the Minnesota Capitol to be a representative and welcoming place for all Minnesotans to visit, the collection of works on the Capitol grounds will evolve over time. This necessitates processes for the CAAPB to consider addition, modification, or removal of works on the Capitol grounds. ([A list of existing commemorative works on the Minnesota Capitol grounds is available as SONAR Exhibit 8 at https://mn.gov/caapb/.](https://mn.gov/caapb/))

There are four primary goals of the proposed rules update, and each is reasonable.

1. Allow the Body of Works at the Capitol to Evolve.

Currently there is a formal process for applying to add new commemorative works at the Capitol, but there is no process to apply for the modification (including re-interpretation) or removal of works. Just as we enable a change in works on the Capitol grounds through additions, so too should we enable change through modifications, reinterpretation, and moving works out of the visible collection at the Capitol.

An evolution of works mirrors the evolving story of Minnesota and its people. A change in works also meets the practical purpose of ensuring that physical space limitations on the Capitol grounds does not prevent future works from being added.

“... the buildings and grounds express the pride of those who initially created the spaces, and the careful additions made by subsequent generations testify to the continued relevance of the Capitol as a symbol of the collective identity, power and spirit of Minnesotans. This is on-going and may never be finished. – 2040 Comprehensive Plan for the Minnesota State Capitol Area, page 36

2. Improve Clarity and Accessibility

The existing *Policy for Commemorative Works on the Minnesota Capitol Grounds*, Minn. Statute 15 B., and Minn. rule chapter 2400 collectively address the criteria, siting, thematic areas, and process for commemorative works. However, they do so in a disjointed manner, with overlap, gaps, and inconsistent organization and written form between the three documents. CAAPB aims to consolidate the commemorative works standards, information, and application forms in the following ways:

- a) Provide a single source of information on the standards and process by updating and moving content from the policy document into the rules;
- b) Create an easy-to-understand, step-by-step guide and forms for the application process;
- c) Format and provide the materials in a) and b) as accessible documents; and
- d) Create a user friendly a page on the CAAPB website where people can learn about the application process, standards, and find forms.

Accessibility relates to peoples' ability to access information in a form they can understand, but it also relates to their ability to access and influence decision-making. The proposed rules amendments increase the amount and frequency of information shared publicly during the commemorative works review process and add opportunities for public comment and input into decision-making.

These changes will make a previously opaque process more understandable, transparent, and open to those who are typically underrepresented in these types of decisions. The rules revisions provide policy and process tools to more Minnesotans and increase their influence over important decisions on commemorative works.

3. Expand Representations of Minnesota History.

The monuments, memorials, and commemorative works at the Minnesota Capitol campus should celebrate highlights of state history and people through the centuries and honor the contributions of people and groups across age, gender, religion, ethnicity, race, and Minnesota geography. The group of works at the Minnesota Capitol should holistically reflect the rich diversity of our State.

“Representation. The Minnesota State Capitol Building is the People’s House and the Capitol Grounds the People’s Front Yard. The Commemorative Artwork on the Capitol Grounds must reflect Minnesota’s diverse history and people. The implementation of this policy prioritizes the full representation of our state on the Capitol Grounds.” – Decision Process Advisory Task Force on commemorative works, page 13

“It [the Capitol Area] is Minnesota’s front yard. The Capitol Area provides a grand shared open space to celebrate being Minnesotan. [...] It is a place to honor individuals, groups and ideas that have shaped Minnesota and contributed to our place in the nation. This is a place to share our many stories and create new ones.” – 2040 Comprehensive Plan for the Minnesota State Capitol Area, page 26

Representation of Minnesota’s diverse history and people on the Capitol grounds includes examining and addressing commemorative works that celebrate persons or events which have come to be understood differently over time and are now associated with and recognized for significantly harmful acts.

4. Comply with and implement the 2040 Comprehensive Plan for the Minnesota State Capitol Area.

The *2040 Comprehensive Plan for the Minnesota State Capitol Area* was adopted by the CAAP Board in June 2021, following a four-year process involving extensive community engagement. Throughout the document are principles, objectives and strategies that recognize and encourage an update of CAAPB's rules for monuments, memorials, and commemorative works of art.

Relevant excerpts from the 2040 Comprehensive Plan for the Minnesota State Capitol Area are provided throughout this document, as a foundation for the proposed rule changes.

The Comprehensive Plan rests on ten core principles, the first of which focuses on the Capitol user experience.

“PRINCIPLE 1: As Minnesota’s Seat of Government and Destination to Thousands Each Year, the Capitol Area offers the highest quality experience to visitors.” – 2040 Comprehensive Plan for the Minnesota State Capitol Area, page 26

The quality of a visitor’s experience hinges on many factors, with the most important being what the Capitol Area makes them think about and how it makes them feel. Commemorative works on the Capitol grounds represent what Minnesota values most highly in its history and heritage.

- Do people see or feel that the Minnesota experience is represented and honored?
- Do the commemorative works represent people, events, and values that make people proud?
- Are there obvious gaps in what is represented?
- Do certain commemorative works celebrate a person or event that disparaged, marginalized, or harmed other groups?

Commemorative works on the Capitol grounds send a message about what the state values in its history and civic culture. The 2040 Comprehensive Plan for the Minnesota State Capitol Area acknowledges this and sets a direction for planning and projects that honor Minnesota and its people.

“Fundamentals: Ensuring the Highest Quality Visitor Experience to Minnesotans”

1. The Capitol Area visitor experience is and will continue to be that of a sense of being in a place bigger than oneself...
2. The Capitol Campus speaks to all Minnesotans.
3. The Capitol Campus is a place to learn about our government and our history...
4. Visitors feel welcomed to and comfortable in the Capitol Area...
5. The Capitol Campus meets people’s needs to gather, demonstrate, and celebrate in groups large and small...
6. The Capitol Area is accessible to all...
7. Visitors feel safe in the Capitol Area...”

– 2040 Comprehensive Plan for the Minnesota State Capitol Area, pages 40-41

The Comprehensive Plan provides explanatory text for each of the 7 fundamentals noted above and makes the case for needed updates to the rules on commemorative works.

B. Specific Reasonableness / Rule-by-Rule Analysis

The following rule-by-rule analysis is organized in the order of the proposed rules.

- The first section is chapter 2400.2040, Definitions.
- The second section is a new part 2400.2703 with nine subparts, which will replace current part 2400.2075, subpart 1, and eliminate reference to the *Policy for Commemorative Art Works in the Minnesota State Capitol Area (2012)*.

2400.2040 Definitions

In tandem with developing proposed rules for the modification or removal of existing monuments, memorials, and art works, 17 terms were identified for definition, to provide readers with a clear understanding of the rules and their interpretation.

Seven (7) definitions are words that already exist in chapter 2400 but are not defined. They are common words but have specific meaning as used in the context of chapter 2400. The defined words are:

1. Subp. 8a. Applicant. This term is needed to define who may submit an application to add, modify, or remove artwork.
2. Subp. 8b. Architectural advisors. This term references the board's advisory committee under Minn. Stat. § 15B.11. The term is used throughout part 2400.2703 as part of the new standards on commemorative works.
3. Subp. 19b. Capitol grounds. This term is used in Minnesota Statute 15B and in Minn. R. 2400 but is not geographically defined. Since the geography of where these rules apply is important, it is prudent to outline in a definition. The added definition describes an area that is smaller than the "Capitol Area" and larger than the "Capitol mall." All three terms are proposed for use in part 2400.2703.
4. Subp. 19c. Capitol mall. This term is used in the existing policy for commemorative works and is proposed for use in part 2400.2703 but has not previously been defined. Adding a definition will make its geography clear.
5. Subp. 19d. Commemorative artwork. Minn. Statute 15B.34 grants the CAAPB authority to review and approve "monuments, memorials, or works of art". Minn. R. 2400 repeatedly uses the words monuments, memorials, and commemorative works, both together and separately. Adding this definition ties the words together under the general term of 'commemorative artwork' and explains that the term encompasses a subset of words that may be used independently.
6. Subd. 25a. Disposition. In general meaning, this word can be a noun or a verb. The rules include the phrase "disposition of artwork", which could be interpreted as a noun or verb by the reader. Providing the definition makes clear that its use is intended as a verb.
7. Subp. 65a. Removal. Removal references the new language in part 2400.2703 and the process the board follows to consider the removal of artwork.

Ten (10) definitions are words or terms that would be added to chapter 2400 under the proposed rules. They are common words but have specific meaning in the context of the proposed part 2400.2703. The defined words are:

1. Subp. 3a. Addition request. This definition is needed to define a new concept introduced in part 2400.2703 that allows an applicant to request a new artwork.
2. Subp. 19a. Board staff. This explains who Board staff are and clearly distinguishes them from the Board members. Board staff include the executive secretary and zoning administrator; both employees have duties to enforce provisions of chapter 2400.
3. Subp. 24a. Design framework. This describes an important plan that shapes decision-making.
4. Subp. 24b. Design process. This describes what a design process is and the steps it entails.
5. Subp. 24c. Designer. This limits the meaning of designer to specific professional fields.
6. Subp. 41a. Lifespan. This definition is used to set three distinct lengths of time that commemorative works may be on the Capitol grounds, which impacts how they are reviewed.
7. Subp. 50a. Modification. The term ‘modification’ is important to define since it is used in various circumstances in the English language. In the case of Chapter 2400, the intent of the word is very specific and needs clear definition.
8. Subp. 50b. Modification request. This defines a new concept introduced in part 2400.2703 that allows an applicant to request that artwork be modified.
9. Subp. 65b. Removal request. This definition is needed to define a new concept introduced in part 2400.2703 that allows an applicant to request that artwork be removed.
10. Subp. 69a. Spatial envelope. This technical term needs to be defined; it is one factor that the board considers when evaluating a proposed commemorative artwork.

2400.2703 Standards for Commemorative Artwork

The proposed rules amendments would replace the limited commemorative works language in 2400.2705 subpart 1, with a new part 2400.2703. A primary intent of the proposed rules amendment is to transfer language from a referenced policy document into the rules themselves, thereby eliminating the need for a separate reference document. This will reduce confusion for people trying to navigate between two documents to understand objectives, conditions, and criteria for commemorative works. The rulemaking process and its rigorous public input and judicial review process will also benefit the final product as compared to establishment in a CAAPB policy.

The existing rules in part 2400.2705, subpart 1, are very brief, identifying six objectives for the addition of new commemorative works. The rules and documents incorporated by reference identify conditions that must be followed – the Comprehensive Plan for the Capitol Area, and the commemorative works policy document, originally adopted in 1993 and updated in 2012.

Proposed part 2400.2703 describes the essential elements of a complete application to add, modify, or remove a work; steps to review the application; required conditions; and criteria to be applied in the review. The distinct activities of an addition, modification, or removal necessitate some differentiation in the conditions and criteria used to evaluate the specific activity. For instance, a design competition is required for adding a new work, but not for modification or removal of a work.

Part 2400.2703, subparts 1-5, address the addition of new commemorative works – the process for applications, review steps, and standards for decisions. Much of the language is based on the *Policy for Commemorative Works in the Minnesota Capitol Area (2012)*, with some reorganization and revisions to improve clarity, particularly for the review process steps. Exhibit 5 compares existing and proposed language for the addition of works. ([SONAR Exhibit 5 is available on the CAAPB website at: https://mn.gov/caapb/](https://mn.gov/caapb/))

Since the process and standards for the addition of new commemorative works is currently in the 2012 Commemorative Works Policy document and not in chapter 2400, the proposed rules as prepared by the Minnesota Revisor do not capture what has changed between the existing and proposed language on new additions. Therefore, CAAP Board staff created a table comparing language for new additions in the existing policy to the language in the proposed rules and included rationale for the areas of change. The comparison document is provided in Exhibit 5 of this SONAR ([SONAR Exhibit 5 is available on the CAAPB website at: https://mn.gov/caapb/](https://mn.gov/caapb/)). Since the existing policy language and the proposed rules language organize steps and standards differently, it is a little challenging to do the comparison in a clear manner. The spreadsheet tries to do so as clearly as possible.

- The left column shows existing policy language, in the order of its appearance in the document.
- The middle column shows what, if any, proposed language relates to existing language. It also shows proposed language that is not in the existing policy.
- The right column provides rationale for the language changes. In some cases, certain sections of the existing policy are not carried over into the proposed rules, usually because they are implementation direction to staff and not standards or formal procedures. In other cases, new steps and language are proposed that do not in the existing policy. In each case, the rationale is explained.

Subpart 1. Guiding principles for commemorative artwork.

This subpart identifies core principles consistent with the CAAPB mission and work, which should be applied in the consideration of commemorative works. The principles reinforce the identified purposes of the Board under Minn. Stat. § 15B.01 – (1) *to preserve and enhance the dignity, beauty, and architectural integrity of the Capitol, the buildings immediately adjacent to it, the Capitol grounds, and the Capitol Area.*

The 10-year review stipulates that CAAPB must proactively evaluate all commemorative works on the Capitol grounds every 10 years, instead of only reviewing a work if someone submits an application for it to be considered. Regular review can identify incongruous elements of existing commemorative works and incompatibility with these rules, enabling the Board to consider if and how to pursue next steps to address the issue(s). Ten years was selected as an amount of time over which shifts might occur that justify re-evaluation and is not so frequent that it strains staff resources.

The addition of a 10-year review requirement fulfills one of 37 implementation steps identified under Principle 1 in the 2040 Comprehensive Plan.

“1.4. Continue ongoing examination of the current understandings and policies surrounding art, representation and placement in the Capitol allowing for increased discourse about current representation of images, statues and monuments in the Capitol Building and on the Capitol Mall.” – 2040 Comprehensive Plan for the Minnesota State Capitol, page 42

Guiding principles identify the overarching expectations of artworks on the Capitol grounds and the role of the Board in reviewing and considering applications for additions modifications or removals.

The guiding principles are shaped by existing policy language and extensive input to and discussion by the two engagement task forces between summer 2020 and spring 2021.

Subpart 1.B.(1) begins with the key principle for considering commemorative works, that consideration must include clear opportunities for the public to be aware of, review, and provide input on the commemorative work action being proposed for board review. A preponderance of comments from the public, media, and other officials and state government since June 2020 made clear that people have not understood who makes decisions about commemorative works on the Capitol grounds, how decisions are made, and how people can provide input.

Subpart 1.B.(2) identifies the statutory role of CAAP Board role to plan, review, and make decisions in the Capitol Area that honor the historic, architectural, and artistic integrity of the Capitol building.

Subpart 1.B.(3) proposes a new requirement that the CAAP Board review and consider all the commemorative artworks on the Capitol grounds every 10 years. The review would invite input from the public and consider the works in alignment with the standards and intent of the rules.

Subpart 2. Conditions for adding new artwork

The rules identify five conditions that new artwork must meet to be considered for addition. The conditions center the support and interest of Minnesotans for the work. The conditions ensure that new works have broad appeal and relate to Minnesota history in a meaningful way. The conditions are similar to ones that have been used by CAAPB in recent decades to review proposals for new artwork.

“It can be expected that calls for new memorials will come in the future; however, installation of further commemorative works should balance the primacy of maintaining the open space of the Capitol Mall along with the importance of including commemorative works that are representative of all Minnesotans.”

– 2040 Comprehensive Plan for the Minnesota Capitol Area, page 34

Subpart 3. Application and review process for new artwork.

The CAAPB’s existing *Policy for Commemorative Works in the Minnesota Capitol Area (2012)* outlines a series of steps for submitting, reviewing, and designing the works. It identifies the roles of agencies, staff, CAAPB Advisors, and the public at each step. That policy was used as the basis for steps described in the amended rules – for new works, modification, or removal of existing works.

The conditions and criteria for review of a proposed addition, modification, or removal differ somewhat to fit the unique circumstances of each action. The design competition is unique to a new work being created, and therefore only exists within that process.

Public notification and requests for input occur at these points:

1. When the application is determined complete, information about it is posted on the CAAPB website.
2. The CAAPB holds a public hearing, inviting input on the proposed artwork.
3. Members of the public may be selected to participate of the design review committee.

The process of selecting the designer for a new work is important. Having clear steps sets expectations and delineates roles for the design review committee, agency staff, and the CAAP Board.

“If you are going to provide diversity in the capital, also include it in the decision-making process.” – Respondent to CAAPB survey on commemorative works

Subpart 4. Criteria for determining location of new artwork.

The Capitol Area is a carefully designed place, with intentional decisions about how and where certain types of work are located. The design criteria ensure that the location of a new work is identified in relation to features such as surrounding works, landscaping, the viewer’s perspective, and public safety.

Subpart 4 identifies the criteria for determining the location of new artwork. These criteria carry over from the existing policy, which has worked well in most regards. The modifications to the language are shown in Exhibit 5, which is available on [the CAAPB website](#), with noted rationale for each major change.

Subpart 5. Criteria for design of new artwork.

The criteria for design of a new work are important to ensure a welcoming visitor experience, durability against the elements, beauty and compatibility with the Capitol and other works, landscaping that is attractive and low maintenance, and adequate lighting for viewing and safety.

Much of this language has carried over from the existing policy, with changes shown in Exhibit 5, which is available on [the CAAPB website](#).

Subpart 6. Conditions for modification or removal of an existing artwork.

One of the most evident gaps in the existing rules is the lack of a process to modify or remove a commemorative artwork. Subpart 6 introduces five conditions that justify modifying or removing existing artwork. This subpart is the corollary of Subpart 2 - Conditions for adding new artwork.

Subp. 6.A. and 6.B. address the topic or subject of the work.

Subp. 6.A. focuses on the degree of public sentiment to modify or remove a work. The desire for change must be demonstrated to reflect a broad public sentiment, meeting the threshold of “sustained, overwhelming, and documented public objection.”

Subp. 6.B. enables consideration of modification or removal if an artwork does not meet the required principles under Subpart 1 or conflicts with criteria and conditions under the other subparts of 2400.2703. This holds all works on the Capitol Mall to the same standards, ensuring that the intent and quality of all works is consistent.

Subp. 6.C., 6.D. and 6.E. identify physical conditions that justify modification or removal. These include the physical condition of the work, potential deterioration, or problems with the site and location of the work itself or in relation to other artworks, structures, or design elements on the Capitol grounds. The CAAPB, ADMIN, and MNHS have collaborated for years to address maintenance, structural, or siting issues for existing commemorative works, but this not been formally addressed in the rules, nor has there been a process for people to apply for consideration of such improvements.

Subpart 7. Application process for modification or removal of an existing artwork.

This subpart outlines the application and review process for any modification or removal of existing work and is the corollary to Subpart 3 for new works. These steps are technical in nature, describing what the applicant, staff, and other parties must do to prepare, review, and decide on an application.

“Artworks and/or their contextualization should change, with advice of historians & communities of color.”

“Honor history-the good and the bad. Use unpleasant history to teach from.”

– Respondents to CAAPB survey on commemorative works

Subpart 8. Criteria for modification of an existing artwork.

Subparts 8 and 9 separately identify the criteria for modification or removal of a work. Decisions for modification or removal are based on different criteria since the action and impact of modifying and removing are unique. Extensive comments to, and engagement by, the CAAP Board since June 2020 indicate two primary perspectives on how to handle inaccuracies or oversights in the existing interpretations and representation of history on the Capitol grounds. Some people favor modification to address any issues, and other people support removal if the concerns are great enough to justify it.

A decision to modify acknowledges that some aspect of the work does not articulate current and complete understanding about the person or event. Modification should address historical context and complexities about the event or person through the diverse perspectives of different people. Modification involves physical changes to the artwork, or changes to signage and information about the artwork to add interpretation that addresses both the positive and negative aspects of the work or its subject.

At times modification may serve as the appropriate method to acknowledge and explain the complexity and changing narrative of history. By retaining the work and providing more information about it, people can learn about changes over time and the lessons we learn from these changes.

There are 12 criteria to evaluate modification requests. The criteria collectively address goals of historical accuracy, representing diverse perspectives, embracing complexity, acknowledging harms done to oppressed groups, encouraging dialogue, and promoting healing and understanding between people. The criteria respond to the extensive community input gathered by the CAAPB during the work

of the Public Engagement Task Force and the Decision Process Advisory Task Forces and reflect some of the themes that surfaced in recent years in local and national conversations about commemoration.

The criteria in Subpart 8 and Subpart 9 are succinct and specific, justifying analysis of each one separately. For the sake of easy reference, the rules language for each is noted below, followed by the explanation.

“Subp. 8.A. The proposed modification must make the artwork more welcoming and engaging to nearby and statewide communities. The applicant, with support from CAAPB staff, must involve nearby and statewide communities in the proposed modification's conceptualization and development.”

Two primary themes of input that the two commemorative works task forces heard from people were a desire for the Minnesota Capitol to be a place where everyone would feel welcome, and that members of the public should have substantial input into how artworks convey that. This criteria requires involving people from across the state in considering how an artwork might be modified to convey an aspect of Minnesota in a way that informs and appeals to Capitol visitors.

“Subp. 8.B. The proposed modification must embrace historical complexity and create space for a productive range of responses, conversations, and interpretations.”

Some artworks on the Capitol are important to the Minnesota story but were designed or have signage that fails to capture important historical context or complexities related to the subject's history. When possible or appropriate, changes to the artwork's design or signage should provide more information, include multiple perspectives or interpretations, and encourage dialogue.

“Subp. 8.C. The proposed modification must consider the social and cultural conditions at the time of the artwork's addition.”

The understanding of events or knowledge about people can change over time, with new information and perspectives. The criteria seeks to require that an applicant who takes issue with an existing artwork based on their present day understanding and circumstances, acknowledge how the work originally came to be and the intent of it. This background is important context when considering whether to modify the work, and how to do so in a way that respects its origin and supporters.

“Subp. 8.D. The proposed modification must prompt reflection, conversation, and awareness of the stories, perspectives, and experiences of historically marginalized or oppressed communities.”

This criteria requires modifications to acknowledge or highlight the change in understanding, perspectives, or range of thought about the subject of the work. The goal is to better inform viewers about the complexity of history and people, and to encourage more robust thinking and conversation about topics, even if they are controversial.

“Subp. 8.E. The proposed modification must incorporate the views of all interested groups and individuals and consider the relationship of these groups' collective history, heritage, and values to the artwork.”

This criteria calls for incorporating the views of all interested recognizing that each group’s perspective is part of a collective narrative about the artwork. It intends to expand the original narrative of the work, which may have been shaped only by the group that advanced the existing work.

“Subp. 8.F. The proposed modification must create an opportunity to increase public understanding of and dialogue about Minnesota's history.”

This criteria, like criteria B, aims to increase information about and a variety of perspectives on the artwork, with the goal of encouraging people to consider, learn about, and discuss Minnesota history.

“Subp.8.G. The proposed modification must enhance the artwork's function as a source of collective identity and belonging for all Minnesotans. The proposed modification must generate, contribute to, or enhance existing social activity in the surrounding public space.”

This criteria intends for a modification of artwork be done in a way that brings people together in a positive way and feels welcoming for people to visit and observe.

“Subp. 8.H. The proposed modification must represent or commemorate a significant event, group, or individual in Minnesota's history.”

This criteria requires the modified artwork to clearly identify how the subject of it is tied to Minnesota history or people.

“Subp. 8.I. The proposed modification must respect 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.”

This criteria is intended to ensure that modifications retain connections to and respect the original artistry and intent of the subject and its sponsors. Without this criteria, people designing the modification might change it in a way that loses connection to what it was originally intended to be.

“Subp. 8. J. The proposed modification must seek to achieve peace, reconciliation, truth, and justice for individuals, groups, and communities that are not represented or who are misrepresented in the historical record.”

This criteria intends for modification to be done in a manner that encourages “peace, reconciliation, truth, and justice for those not represented or misrepresented in the public record.”

“Subp. 8.K. The proposed modification must acknowledge evolving social values and account for the views and needs of the contemporary community.”

This criteria requires the modified work to reflect current values and views of Minnesotans. The criteria anticipates that such changes over the course of time may prompt requests for modification.

“Commemorating People and Ideas Important to Minnesota. Monuments belong to a particular category of commemorative public art that convey the values of a community. Commemorative art, particularly memorials, attempt to tell the moving stories of important people and events. . . .memorials seek a truth about a person, place, or event, and records their facts. They are attempts to connect the viewer to those stories, often presenting

messages about a set of aspirations or values that the sponsors and artists shared and felt worthy of preserving.”

– 2040 Comprehensive Plan for the Minnesota State Capitol, page 34

Subpart 9. Criteria for removal of an existing commemorative artwork.

The proposed rules establish criteria for removal that must be serious and compelling, such that modification alone does not address the need, concern, or harm.

The proposed rules include 12 criteria to consider in evaluating removal of commemorative works. The first two criteria (A and B) are based on public sentiment about the work and its representation of the state’s history. They address the intellectual and emotional experience of people who interact with the work and reflect themes identified through public input and research into other examples and literature about the removal of commemorative works. There are instances when removal of works is the best decision for Minnesotans.

When removal is contemplated, it is important to understand and acknowledge why the work was originally installed, and who and what it represented at the time of installation in addition to modern interpretations.

The proposed rules seek to provide further opportunities for a broad representation of Minnesotans on the Capitol grounds. Maintaining the current collection of Capitol artworks as it exists today without a process to consider changes discounts present day groups, their interests, and their historical perspectives. The proposed rules allow contemporary Minnesotans to determine the collection of artworks on the Capitol grounds to represent the people of Minnesota, their history, and their culture.

The CAAP Board understands that decisions about removal must be taken with utmost seriousness and care and proposes a rigorous process to consider such requests.

“Subp. 9.A. Community feedback about the artwork, the artwork’s site, and the artwork’s condition collected at public meetings.”

This criteria ensures that members of the public have opportunity to provide input on the commemorative work and its proposed removal, through the venue of public meetings, which facilitate dialogue, as opposed to surveys, which only allow one-way communication.

“Subp. 9.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.”

This criteria requires the application to specifically identify how and why the applicant considers the artwork to misrepresent history, and to demonstrate that it significantly affects a group of people in an adverse way. If the application does not provide a compelling case, then this criteria cannot be used by the CAAPB as grounds for removal.

The remaining criteria (C thru K) relate to the history of the artwork itself and its physical condition and location.

“Subp. 9.C. The method by which the artwork was acquired and accessioned in the commemorative artwork collection, such as by donation, loan, or commission.”

This criteria requires that decisions about potential removal of a work be done with a strong understanding of why the work was originally commissioned, who advocated for it and why, and the source of funding and acquisition. This information, if not previously known, may shape how it is perceived today, and enables the CAAPB to include representatives of the original supporters or funders to be included in conversations about its proposed removal.

“Subp. 9.D. The qualifications and professional reputation of the artist, and the artwork’s craftsmanship, conceptual content, style, and form.”

This criteria ensures that works are not removed until information about the artist and the work’s artistic qualities and craftsmanship are researched and taken into consideration when deciding on a request for removal. A work may meet other criteria for removal but be highly valued from an artistic perspective. If so, then special consideration should be given to if and how it is removed and where it goes after removal.

“Subp. 9.E. The availability of necessary funding for conservation, maintenance, and repair of the artwork; exhibition and storage space; real property for siting artwork; and staff support.”

If an artwork proposed for removal from the Capitol grounds is going to be relocated, then the financial feasibility of reinstalling it and maintaining it in the new location should be evaluated and considered before a decision of removal is made. The intent is to ensure that plans for removed works are clear and implementable before the process of relocation begins.

“Subp. 9.F. The degree to which removal of the artwork would detract from the overall artistic and architectural integrity of the Capitol or Capitol area.”

Each commemorative work added to the Capitol grounds is designed in consideration of the artistic, architectural, and historic features of the Capitol area, and complements or expands those features. Once in place, a work is regarded for its unique contributions to the art, architecture, and history of the Capitol area, and may become an important feature in the landscape or perform a function. For example, if the work included a staircase that connected other parts of the grounds, then removal of the work would cause disruption or necessitate something to replace the function it served. Any significant potential impact, positive or negative, should be identified, evaluated, and factored into decision-making.

“Subp. 9.G. The artwork’s style, form, scale, diversity, quantity, quality, longevity, and compatibility with the existing commemorative artwork collection, and goals of the board.”

This criteria requires consideration of the work as part of a larger theme or collection on works on the Capitol grounds. The characteristics of the artwork and how it relates to other works must be evaluated, to determine the potential impact of its removal on the overall themes and subjects of works in the collection. For example, there may be an intent in the 2040 Comprehensive Plan for the Minnesota State Capitol and the related Capitol Mall Framework Plan to increase or decrease certain type of works compared to others, such as the proportion works commemorating events, relative to works commemorating individuals

“Subp. 9.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.”

This criteria examines the physical characteristics of the work in relation to its location and context, without regard to its relationship to other works. The impacts of removal to the immediate area, including to land, water, vegetation, or other structures must be evaluated and factored into a decision about whether it is removed.

“Subp. 9.I. Issues related to liability, insurance, intellectual property rights, warranties, ownership, theft, vandalism, loss, indemnification, and public safety.”

Before a work is removed, there should be a clear understanding of any legal, financial, and regulatory factors that would impact if and how it is removed.

“Subp. 9.J. Safety, the avoidance of emergencies caused by hazards, relevant construction schedules, and the allowance of enough time for a review process.”

There may be situations when an artwork has become unstable or physically deteriorated to an extent that it may cause safety issues for people or objects nearby. In this case, alteration or removal of the work may need to occur more quickly than the CAAPB could decide on removal under its standard process described in the rules. This criterion enables the Board to act on approving removal if necessary to protect health and safety.

“Subp. 9.K. The value of the artwork as determined by a professional appraiser.”

The appraised value of the work is information that should be taken into account when deciding on or planning removal of the work. If the work has a very high appraisal value, then the manner of disposition is likely to be different than a less valuable work and will impact the estimated budget for relocating the work that is required by Subp. 9. E.

2400.2705 STANDARDS FOR CIVIC AND INSTITUTIONAL USES.

This part is amended to remove the current language that incorporates three documents by reference, and instead refers readers to new part 2400.2703.

7. Regulatory Analysis

This part addresses the requirements of Minnesota Statutes, section 14.131, paragraph (a), which requires state agencies to address several questions in the SONAR.

A. Classes of Persons

Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

Classes of persons to be affected by the proposed rule:

- Any person in Minnesota who visits or works at the Capitol campus.
- Groups of people who identify with the meaning and symbolism of a monument, memorial, or commemorative work on the Capitol campus.
- People and groups associated with current commemorative works on the Capitol campus.
- All applicants for adding, modifying, removing commemorative works; contractors, architects, engineers, artwork professionals.
- Groups of people who are troubled, angered, or intimidated by a work at the Capitol campus and wish it to be modified or removed.
- Groups of people who are troubled, angered, or saddened by the potential modification or removal of an existing work at the Capitol campus.
- State Arts Board, Department of Administration, MNHS, Minnesota Society of the American Institute of Architects, Minnesota Department of Employment and Economic Development, Ramsey County, City of Saint Paul's Planning and Economic Development Department, Saint Paul Mayor and City Council offices.

Classes of persons that will bear the costs of the proposed rule:

- Persons or groups who apply to add, modify, or remove a work. The rules require that the applicant identify and secure funds to cover work associated with the required process steps, design (for new works), and construction-related activities on the work and on the site.
- Potential funders (philanthropic, private, or public) who cover the costs for the applicant to pursue addition, modification, or removal.
- Classes of persons that will benefit from the proposed rule:
- Persons or groups who wish to officially apply for modification or removal of an existing work, a process that does not exist under the current rules.
- People who are upset by seeing, reading, or hearing about vandalism to an existing work – vandalism that is motivated by the absence of a legal process to apply for modification or removal.

B. Probable Costs to Agencies

The Probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The cost associated with application and enforcement of this rule relates chiefly to the staff time or contracted professional expertise necessary for timely review and decisions on applications for commemorative works. This includes time spent by the Architectural advisers, which are charged on an hourly basis and the time of Board members, which is charged per meeting.

Implementation Costs

If the rules are amended for commemorative works processes, then new guidance materials and forms should be prepared for external stakeholders and internal staff. For the public, it's important to create a package of information on "Applications for Commemorative Works." The packet would include background information, application forms, and instructions on the process. This same set of materials will be posted on a new CAAPB web page that is clear, easy to navigate, and accessible.

A complementary set of materials will be prepared for CAAPB staff, advisors, Board members, and agency partners. These will include workplan templates for each type of review and suggestions on how to consider each condition and criteria for an application. Templates will also be created for letters, memos, and other communications expected to be sent by staff during each stage of review and in presentations to the Board. Finally, a generalized community engagement plan template will be drafted to guide public outreach and input activities, including a recommended stakeholders and communications list.

Minn. Stat. § 15B.04, subd. 6, provides that "the state must pay the administrative and planning expenses of the board." Additionally, the board may "contract for professional and other similar services on the terms it deems desirable (Minn. Stat. § 15B.04, subd. 4(c)). The state must also pay the board's expenses as provided under Minn. Stat. § 15B.17, subd. 2.

Estimated implementation costs based on \$ value of expected hours of work for staff or contractor

CAAPB – \$20,000 to \$50,000 (depends on breadth and depth of implementation materials)
ADMIN – \$1,000 (for review of implementation materials).

Operational Costs

These costs include all steps to review, engage the public, and decide on an application proposal.

Estimated implementation costs based estimated hours of work by staff on each activity required in the subparts, multiplied by the average hourly \$ wage of the staff or contractor.

Review Proposed Addition of a commemorative work (2400.2703, subparts 2, 3, 4, and 5)

CAAPB – \$65,000
ADMIN – \$20,000

Review Proposed Modification of a commemorative work (2400.2703, subparts 6 and 7)

CAAPB – \$25,000 - \$45,000 (depends on extent of modification)

ADMIN – \$5,000 - \$15,000 (depends on extent of modification)

Review Proposed Removal of a commemorative work (2400.2703, subparts 6 and 8)

CAAPB – \$20,000 - \$35,000 (depends on breadth of public interest and public engagement)

ADMIN – \$7,500

Enforcement Costs

Proposed rule 2400.2703 Subpart 1 includes the requirement for a 10-year review of all 19 works on the Capitol grounds.

Estimated review costs based on \$ value of expected hours of work for staff or contractor

CAAPB – \$50,000 – \$75,000

Revenue implications

There is no anticipated revenue from accepting, reviewing, and processing applications for commemorative works.

C. Less Costly or Intrusive Methods

A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The potential costs to the State could be reduced if the process steps for review of applications were reduced or simplified, such as minimal requirement for public input, the elimination of research that provides background and context for considering the work, and no use of committees for the review process. However, these simplifications would deprive the public of any chance to provide input on the proposed work and reduce information available to the CAAPB when considering the application. Decisions on monuments, memorials, and works of art on the Capitol campus are vitally important and effect the experience of every visitor to the Minnesota Capitol, and their sense of history, belonging, and pride.

Other than the above-mentioned options, it is not possible to reduce the cost or be less intrusive when reviewing potential additions or changes to commemorative works on the Capitol campus.

D. Alternative Methods Considered

A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

Alternative methods were considered but would not enable CAAPB to achieve its primary goals for an updated approach for commemorative works review that reflects Minnesotans' interests.

1. Status Quo

It was contemplated to keep the status quo with no amendments to the commemorative works policy nor the rules. Instead, the Board would use Objective 6, under Section 5 of the *Policy for Commemorative Works in the Minnesota Capitol Area (2012)* to provide authority to consider modification or removal.

Section 5) Objectives for Commemorations [...]

- 6) that existing commemoratives within the Capitol Area found incompatible with CAAPB objectives and Comprehensive Plan policies may be considered for relocation.
 - Policy for Commemorative Works in the Minnesota Capitol Area (2012), page 5

However, the policy has design criteria or procedures for “relocation” as it has for the addition of works. To use the foundation of one mention in the policy to make important decisions on commemorative works could lead to inconsistent application of the policy and questions about the integrity of the decisions, absent clearly defined procedures and criteria. There could also be challenges to how the word “relocation” is interpreted, since relocation as a word does not mean modification or removal.

2. Updating Policy without Rule Amendments

Since the *Policy for Commemorative Works in the Minnesota Capitol Area (2012)* has been the guiding document used by CAAPB to evaluate new works, CAAPB anticipated that updates to address proposed modification or removal would be implemented in a revised version of the commemorative works policy document. When the Decision Process Advisory Task Force submitted draft policy amendments to CAAPB staff and Board members, CAAPB staff decided that its implementation should include updating the referenced policy document in Minn. R. 2400.2705 subp. 1 B.(3) which is currently “*Commemorative Works in the Capitol Area: A Framework for Initiation, Evaluation and Implementation of Commemorative Works in the Capitol Area, May 1993.*” CAAPB staff discussed the rules reference update with the agency’s legal counsel from the Attorney General’s Office and was advised to shift the contents of the policy document into the rules themselves, instead of incorporating them by reference. The importance of the CAAPB’s authority and standards for commemorative works decisions was determined to be equivalent to the other content of Chapter 2400, which details CAAPB zoning and land use rules for the Capitol Area. The policy language warranted the rigor and scrutiny of a rulemaking process and provided the transparency that the public sought. The Board considered the advisement and supported initiation of the rulemaking process.

3. Amending Rules with Fewer Steps, Conditions, and Criteria

The Decision Process Advisory Task Force and the Public Engagement Task Force heard and discussed many interests and concerns from Minnesotans on commemorative works in the Capitol area. The task forces distilled and prioritized the key messages and highlighted those in their reports and recommended policy language. CAAPB staff also reviewed the draft policy language and removed or added items they thought would simplify and clarify the CAAPB review and decision-making process. Potential steps, conditions, and criteria were considered and then removed if they did not reflect or achieve the core goals of the policy update. The proposed rules that remain are considered by CAAPB staff and the Board to be the minimum needed to provide a clear, transparent, and consistent process for all applicants. Removing any element of the current proposed rules would compromise achieving a particular outcome that was determined by the Board and staff to be fundamental to the commemorative works process.

E. Cost of Compliance for Affected Parties

The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The cost of commemorative artwork projects on the Capitol grounds varies widely, ranging from the cost of small repairs to complete addition of new works. In June 2020, CAAPB executive Secretary Paul Mandell told the CAAP Board that, “for the most part, the memorials added on his watch since 1987, involved both private dollars and a State appropriation; and that on average, they take three to five years from original idea and discussion through to dedication, and costs at least \$450,000.”

Probable costs for modification or removal of commemorative works are hard to identify since these activities have not formally occurred. Instead, the cost of past projects to maintain or restore existing commemorative work, or add signage, may be a guide. Expected costs will be paid or absorbed by:

- Applicants using private and/or philanthropic resources.
- Minnesota Capitol Area Architectural and Planning Board for the time and expertise to review and process applications, and to host committees and public meetings.
- Minnesota Department of Administration for the time and expertise to review construction, installation, and maintenance documents, and to oversee the physical work of addition, modification, or removal if or when it occurs.
- Minnesota Historical Society for the time and expertise to consult with CAAPB on a limited basis during the review process.

F. Costs or Consequences of Not Adopting

The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

Not adopting the proposed rule would carry the consequence of continuing the status quo where no process exists to consider the modification or removal of a commemorative work on the Minnesota Capitol grounds. This consequence is borne by individuals who may wish to propose such a modification or removal but cannot.

The existing rules on adding commemorative works and how they are applied can be confusing to members of the public and lawmakers, as well an obstacle to potential applicants, because the relevant text in Minn. R. 2400.2705, subp. 1, is short and very general, and relies on a separate and more complete document on the addition process and standards, which is “incorporated by reference.”

G. Differences from Federal Regulations

An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There are no existing federal regulations that relate to the addition, modification, or removal of commemorative works at the Minnesota Capitol and grounds. The proposed rules do not conflict with

federal regulations, nor do they regulate facilities or properties owned or managed by the federal government.

H. Cumulative Effect with Other Regulations

An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

There are no effects of the rule that relate to other federal or state regulations.

8. Additional Notice Plan

Minn. Stat. § 14.131 requires that an Agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule, or explain why these efforts were not made.

Since June 2020, the Capitol Area Architectural and Planning Board has actively hosted conversations, surveys and meetings regarding commemorative works at the Minnesota Capitol and policies governing them. These activities are previously detailed in Section 4. Public participation and stakeholder involvement. During that time, people were invited through task force events and the CAAPB website to sign up to receive email updates on the process to consider commemorative works at the Minnesota Capitol. People could sign up by sending an email directly to staff asking to be placed on the commemorative works email list (35 people signed up directly), or they could select to receive notices through the CAAPB GovDelivery service which provides updates on all CAAPB activities.

A. Required Notice

Request for Comments

The “Request for Comments” on proposed revisions to Minn. R. 2400.2705, subp. 1(A), (B), Revisor ID Number R-04720, was posted on the Office of Administrative Hearings Rulemaking eComments website on October 14, 2021 and remained open until December 16, 2021. (Request for Comments are SONAR Exhibit 4 which is available on the CAAPB website at <https://mn.gov/caapb/>)

Notice of the “Request for Comments” portal being open and available was posted on or emailed to:

- [The CAAPB website](#),
 - 26 people who are CAAPB members, staff, or architectural advisors,
 - 2,700 people subscribed to receive CAAPB notices via the GovDelivery service; this includes people who chose to receive updates on commemorative works activities through GovDelivery subscription, instead of requesting that updates be emailed to them directly,
 - 72 people who are signed up to receive direct email notices from CAAPB on agendas and other CAAPB news,
 - 35 people who are signed up to receive direct email notices regarding the commemorative works process; 26 of these were members of the Decision Process Advisory Task Force and the Public Engagement Task Force, and the remaining 9 closely followed the task force work, and
 - 800 plus recipients of a Governor’s Office weekly email update community-based organizations interested in the equity-focused work of the administration.
1. In addition, information on the commemorative work rulemaking process, the Request for Comments portal, and the intent for a future public hearing was presented by the CAAPB Executive Secretary at a virtual meeting with tribal leaders and their staff. The meeting is a regularly scheduled event hosted by the Governor’s office to provide updates from State agencies to tribal representatives.

The Request for Comments asked respondents to consider and reply to two questions.

Question 1 – Do you think that there are reasons that the Capitol Area Architectural and Planning Board (CAAPB) should alter, reinterpret, or remove an existing monument, memorial, or commemorative artwork on the Capitol grounds? Please explain.

Question 2 – What steps do you suggest the CAAPB include in its process to consider adding, altering, reinterpreting, or removing a monument, memorial, or commemorative artwork on the Minnesota State Capitol grounds? Please explain.

2. Responses to the Request for Comments are available in SONAR Exhibit 4 which is available on the [CAAPB website](#). There were 18 participants and 20 answers. The comments reflected the full range of opinions on the idea of removing or modifying works on the Minnesota Capitol grounds. Eighteen people replied to the Request for Comments. Fourteen of the respondents supported new rules to allow requests for and CAAPB consideration of removal or modification requests. Most of those people also thought that removal of some works may be justified. Four of the respondents did not think that new rules are needed, nor did they support removal of existing works on the Capitol grounds.
3. The 18 responses to the Request for Comments were thoughtful and well-stated. They are an important addition to the public engagement and input collected by the CAAPB from hundreds of Minnesotans, which shaped the proposed rules amendments.

Remaining required notifications

The remaining required notifications are listed below with a description of how the CAAPB will comply with each.

1. Minn. Stat. § 14.14, subd. 1a. On the day the proposed rule is published in the State Register, the CAAPB will send an electronic notice, using GovDelivery, with a hyperlink to electronic copies of the Notice of Hearing on the proposed rule amendments, SONAR, and proposed rule to all parties who have registered with the CAAPB for the purpose of receiving notice of rule proceedings. Any parties within this group that have requested non-electronic notice will receive copies of the Notice and the proposed rule in hard copy via US Mail. Both the electronic and US Mail notice will be sent at least 33 days before the end of the public comment period.
2. Minn. Stat. § 14.116. The CAAPB intends to send a cover letter with a hyperlink to electronic copies of the Notice of Hearing on the proposed rule amendments, SONAR and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. The timing of this notice will occur at least 33 days before the end of the comment period.
3. Minn. Stat. § 14.131. The CAAPB will send a copy of the SONAR to the Legislative Reference Library in accordance with Minn. Stat. § 14.131 when the Notice required under Minn. Stat. § 14.14, subd. 1a, is sent. This Notice will be sent at least 33 days before the end of the comment period.
4. In addition, posted on the CAAPB website is a copy of the [Notice, proposed rule amendments and SONAR](#).

The following notices are required under certain circumstances; however, they do not apply to this rulemaking and will not be sent:

1. Minn. Stat. § 14.111. If the rule has an impact on agricultural land, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the State Register. This rule will not affect agricultural land or farming operations. The Commissioner of Agriculture will not be notified of potential rule changes.
2. Minn. Stat. § 14.116. In addition to requiring notice to affected/interested legislators, this statute also states that if the mailing of the notice is within two years of the effective date of the law granting the Agency authority to adopt the proposed rule, the Agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting House and Senate legislators who were chief authors of the bill granting the rulemaking. This requirement does not apply because the CAAPB is using its general rulemaking authority for this proposed rule, and no bill was authored within the past two years granting special authority for this rulemaking.
3. Minn. Stat. § 116.07, subd. 7i. This statute requires notification of specific legislators of the adoption of rules applying to feedlots and fees. The proposed rules do not relate to feedlots or fees so this requirement does not apply.

B. Additional Notice

Minn. Stat. § 14.14 requires that in addition to its required notices,

“each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.”

The Capitol Area Architectural and Planning Board (CAAPB) considered these statutory requirements governing additional notification and as detailed in this section, intends to fully comply with them. In addition, as described in Section 4, Public participation and stakeholder involvement, the CAAPB has made reasonable efforts, thus far, to notify and involve the public and stakeholders.

The CAAPB requested that the Office of Administrative Hearings review and approve this Additional Notice Plan, pursuant to Minn. R. 1400.2060, and received approval conditioned on suggested amendments, which have been addressed herein. The CAAPB’s plan to notify additional parties includes the following actions to be taken on February 7, 2022, the date that the Notice is published in the State Register:

Publish on the CAAPB’s webpage at <https://mn.gov/caapb/> the Notice of Intent to Adopt Rules, proposed rules RD-4720, the SONAR and its exhibits, and background information on other CAAPB activities related to commemorative works rulemaking. Relevant updates on the rulemaking will be posted regularly on the webpage, including Hearing exhibits.

Provide specific notice to tribal authorities. The CAAPB intends to send an electronic notice with a hyperlink to electronic copies of the Notice of Hearing on the proposed rule amendments, SONAR, and proposed rule amendments to the 11 federally recognized tribes in Minnesota. This Notice will be sent on or near the day the proposed rule is published in the State Register, at least 33 days before the end of the comment period.

Send electronic notice with a hyperlink to electronic copies of the Notice of Intent to Adopt, SONAR, proposed rules amendments, and details on how to attend the March 14, 2022, public hearing with the Administrative Law Judge, at least 33 days before the end of the comment period, to:

- groups who were involved in or requested notice of CAAPB activities on commemorative works rulemaking
- state agencies, governmental entities, organizations, or groups who may be directly or indirectly affected by the rules

The groups to be notified are listed below and arranged into general categories. When a group is being notified through an existing email contact list, the number of recipients is noted.

CAAPB

1. Board members, staff, and advisors (26 people)
2. Staff and Advisors to the CAAPB (14 people)
3. CAAPB GovDelivery subscribers (2,700 email addresses)
4. All members of the Decision Process Advisory Task Force and the Public Engagement Task Force, and email subscribers to the task forces' project list (35 people)
5. CAAPB agenda email subscribers (72 people)

Governor's Office

1. Governor's Office Weekly Email Update to Subscribed Community-based Organizations Interested in the Equity-focused Work of the Administration (800 people)

Legislators

1. Senator Mary Kiffmeyer, Chair of Senate Finance and Policy Committee
2. Senator Jim Carlson, Ranking Minority Member of Senate Finance and Policy Committee
3. Rep . Michael Nelson, Chair of House State Government Finance and Elections
4. Rep. Jim Nash, Republican Lead of House State Government Finance and Elections
5. Senator Carrie Ruud, Chair, Senate Environment and Natural Resources Policy and Legacy Finance Committee
6. Senator Fong Hawj, Ranking Minority Member of Senate Environment and Natural Resources Policy and Finance Committee
7. Senator Sandy Pappas, District 65
8. Rep. Rena Moran, District 65A
9. Rep. Carlos Mariani, District 65B

State Agencies

1. MN Department of Administration, Commissioner
2. MN Department of Employment and Economic Development, Commissioner
3. MN Department of Human Rights, Commissioner
4. MN Department of Human Services, Commissioner
5. MN Department of Transportation, Commissioner
6. MN Department of Veterans Affairs, Commissioner

Regional and Local Government

1. Association of MN Counties, Executive Director
2. League of Minnesota Cities, Executive Director
3. Metropolitan Council, Chair and members
4. Ramsey County Commissioners
5. Saint Paul Mayor Melvin Carter
6. Saint Paul City Councilmembers
7. Saint Paul Heritage Preservation Commission, Heritage Preservation Supervisor
8. Saint Paul Planning and Economic Development, Director
9. Capitol River District Council, Executive Director

Historic

1. Minnesota Historical Society, Director of Government Relations
2. Minnesota State Historic Preservation Office, Deputy Officer
3. Ramsey County Historical Society, President
4. Rethos, Executive Director

Culture and Heritage

1. Southeast Asian Diaspora Project (SEAD), CO-Director
2. Hmong American Partnership, President and CEO
3. Council on Latino Affairs, Executive Director
4. Council on Asian Pacific Minnesotans, Executive Director
5. Council for Minnesotans of African Heritage, Executive Director
6. Indian Affairs Council, Executive Director
7. Leaders of eleven federally recognized Indian Tribes in Minnesota
8. Women Winning, Interim Executive Director
9. Minnesota League of Women Voters
10. Women's Foundation of Minnesota, Director

Military and First Responders

1. American Legion (MN American Legion Auxiliary), Communications Director
2. Veterans of Foreign Wars - Minnesota Department
3. Minnesota Department of Military Affairs (National Guard)
4. Frontline Foundation, Board of Directors
5. Minnesota Police and Peace Officers Association, Executive Director
6. Minnesota State Fire Chiefs Association, Executive Director
7. Minnesota Professional Firefighters Assc., President

Arts

1. MN Humanities Commission, Chief Executive Officer
2. State Arts Board, Executive Director
3. Public Arts Saint Paul, Executive Director

Planning and Design

1. American Institute of Architects MN, Executive Director
2. MN American Society of Landscape Architects, Board President
3. MN American Planning Association, Board President
4. University of Minnesota design, arts, urban studies and law departments

Press

The CAAPB has a list of press contacts who have expressed interest in receiving notice of CAAPB activities. This contact list includes members of the Capitol Press Corp. The 63 contacts on the CAAPB press list represent 26 media publications or outlets which have local, regional, or statewide coverage.

1. AP
2. BizJournals
3. Bring Me the News
4. Duluth News Tribune
5. Forum News Service
6. Fox
7. Kare11
8. KMSP-TV 9
9. KSTP
10. KTTC
11. KTTC-TV Rochester
12. Mankato Free Press
13. MinnPost
14. MN Lawyer
15. MN News Network
16. MN Radio
17. Mn Reformer
18. MN Capitol News
19. MPR
20. Native News Online
21. Pioneer Press
22. Post Bulletin
23. Star Tribune
24. TPT
25. Uptake
26. WCCO

The CAAPB believes that by following the steps of this Additional Notice Plan and by publication in the State Register on February 7, 2022, the CAAPB will adequately provide additional notice pursuant to Minn. Stat. § 14.14, subd. 1a.

9. CAAPB-specific Statutorily Required Analysis

A. Performance-based rules

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the CAAPB's regulatory objectives while allowing maximum flexibility to regulated parties and to the CAAPB in meeting those objectives.

CAAPB rules on commemorative works prescribe steps for application and review of commemorative work proposals. The objectives, steps, conditions, and criteria are clearly described, but are qualitative. They identify the intent to be achieved, without being too prescriptive on how to meet it. The most prescriptive elements are Subpart 3 and Subpart 7, which identify the steps required to review and make decisions on commemorative work proposals. Clear and consistent steps provide a consistent and dependable process for all applicants, the public and the CAAPB. Within each step there is some flexibility in how it is achieved.

B. Consult with MMB on local government impact

The CAAPB must consult with MMB to help evaluate the fiscal impact and benefits of the proposed rule on units of local governments. To consult with MMB, the CAAPB sent MMB the SONAR and proposed rules to help it determine the impact and benefits of the proposed rule on units of local governments. [MMB's Determination letter will be available under 'Hearing Exhibits' on the CAAPB website at https://mn.gov/caapb/.](https://mn.gov/caapb/)

C. Impact on local government ordinances and rules

Minnesota Statutes, section 14.128, subdivision 1, requires the CAAPB to decide of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation to comply with the rule. The CAAPB determined that the proposed amendments will not have any effect on local ordinances or regulations.

D. Costs of complying for small business or city

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

There are no costs of complying with these rules for businesses of any size or for any city. The rules only apply to activities that will occur on State property in the Capitol Area. All costs will be covered by the applicants for the addition, modification, or removal of the works, and covered by State agencies as previously described in Regulatory Analysis, pages 32 and 33.

E. Impact on farming operations

The proposed rule does not affect farming operations.

10. Authors, witnesses, and SONAR exhibits

A. Authors

1. Merritt Clapp-Smith, Executive Secretary, Capitol Area Architectural and Planning Board since July 1, 2021 (Merritt Clapp-Smith will serve as a Witness at the hearing.)
2. Paul Mandell, Capitol Area Architectural and Planning Board (retired on June 30, 2021)
3. Peter Musty, Zoning Administrator and Principal Planner, Capitol Area Architectural and Planning Board
4. Members of the Decision Process Advisory Task Force on Commemorative Works (SONAR Exhibit 2 available at <https://mn.gov/caapb/>)

B. Witnesses

1. Lieutenant Governor Peggy Flanagan, Chair of the Capitol Area Architectural and Planning Board. Lt. Governor Flanagan will provide an overview of the Board and its rulemaking authority.
2. Merritt Clapp-Smith, Executive Secretary, Capitol Area Architectural and Planning Board. Merritt will introduce the proposed rules and testify as a witness in support of their need and reasonableness.

C. SONAR Exhibits

[SONAR exhibits are available on the CAAPB website.](#)

1. Policy for Commemorative Works in the Minnesota State Capitol Area (2012)
2. Decision Process Advisory Task Force on Commemorative Works – Final Report
3. Public Engagement Task Force on Commemorative Work – Final Report
4. Request for Comments record (accessible version here)
5. Comparison of existing policy and proposed rules for addition of commemorative works
6. CAAP Board Meeting minutes regarding commemorative works
7. Media on CAAPB commemorative works review process – accessible format
8. Existing Commemorative Works on the Minnesota Capitol grounds

11. Conclusion

In this SONAR, the CAAPB has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapter 2400. The CAAPB has provided the necessary notice and in this SONAR documented its compliance with all applicable administrative rulemaking requirements in statute and rule.

Based on the forgoing, the proposed amendments are both needed and reasonable.

Merritt Clapp-Smith

[Executive Secretary]
CAAPB

February 4, 2022

Date