



Board Packet Executive Summary

May 08, 2023

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Introduction to and Framework of Confidential Legal Issues

Toni Clithero, the VCBB General Counsel, will be introduced to the Board and share initial thoughts on various legal and policy questions in Executive Session.

Board Response to the Auditor's Report

Patty Richards has prepared a Memorandum to the Board entitled Draft Outline VCBB Board Response to the Investigative Report of the State Auditor. It is the staff's understanding that this outline summarizes the risks identified in the report as an outline for a discussion between the Board and Staff on Monday. Staff looks forward to assisting the Board in planning, preparing, and implementing the work necessary to address the identified risks.

With respect to the discussion at our last meeting, staff notes that the document prepared by staff and presented at the April Board meeting was not a formal response to the report but a response in real-time to legislative inquiries, which it shared in advance of testimony with the Auditor's office. Staff has not prepared a formal response to the report nor is one required or recommended.

Vernonburg Introduction, Overview and Timeline

VCBB staff, PSD staff, Stone Environmental, and a representative from the Vermont Community Action agencies met for two days (Monday and Tuesday of this week) to kick off the BEAD and Digital Equity planning process with Vernonburg Group. The expanded team worked on goals, performance indicators, and a timeline. In the April meeting, staff committed to provide a regular update on the progress of the planning process, which will be included on agendas for Board meetings until the Board reviews the plan and it is submitted to the NTIA. Vernonburg will be introduced to the Board and will present their initial plan and timeline.

Budget

Staff have been working closely with the PSD for over a year to develop a budget and format for the Board. The PSD will have the budget completed and formatted by the end of the day this Friday (May 5), and it will be sent to the Board at that time. Staff will be looking for budget approval for the 2024 Fiscal Year budget which runs from 07/01/23 to 06/30/24 during the June

meeting. Staff will present the budget proposal at the May meeting for approval at the June meeting.

Vermont Community Broadband Board Meeting
Monday, May 8, 2023, 12:00pm – 4:00pm
AGENDA

Meeting is being held virtually.

[Click here to join the meeting](#)

Join by Phone; [+1 802-828-7667, 494812198#](#)

Note: there may be executive sessions as needed

- 12:00 1) Meeting Call to Order, Roll Call, Approval of Agenda
- 12:05 2) Approval of March 13 and April 10 Meeting Minutes
- 12:15 3) Introduction to and Framework of Confidential Legal Issues – *Toni Clithero* – Executive Session - *Confidential attorney-client communications made for the purpose of providing professional legal services. 1 V.S.A. § 313(a)(1)(F)*
- 12:45 4) Discussion: Investigative Report from Auditor's Office – *Patty Richards*
- 2:45 5) BEAD/Digital Equity: Vernonburg Introduction, Overview, and Timeline – *Christine Hallquist*
- 3:05 6) Budget – *Christine Hallquist*
- 3:20 7) Staff Updates
- General VCBB Updates – *Rob Fish*
 - Dashboard Review – *Alissa Matthews*
 - Communications & Media – *Herryn Herzog*
- 3:30 8) VCUDA Updates – *Rob Vietzke*
- 3:45 9) Public Comment
- 3:55 10) Parking Lot – *Christine Hallquist*
- 4:00 11) Confirm Next Regular Meeting 6/12 & Motion to Adjourn

Press inquiries: please contact Herryn Herzog, herryn.herzog@vermont.gov (802) 522-3396.

Vermont Community Broadband Board Meeting

Monday, March 13th, 2023, 12:00pm – 4:00pm

Minutes

I. Meeting Call to Order, Roll Call, & Approval of Agenda

Patty Richards called the meeting to order at 12:06 and completed roll call.

- Patty Richards, Chair (Remote)
- Laura Sibilia (Joined at 12:14)
- Brian Otley (Remote)
- Holly Groschner (Remote)
- Dan Nelson (Absent)
- Christine Hallquist - Staff (Remote)
- Robert Fish – Staff (Remote)
- Alissa Matthews – Staff (Remote)
- Herryn Herzog – Staff (Remote)
- Lucy Rogers – Staff (Remote)
- Tracy Collier - Staff (Remote)
- Kristin Brynga – PSD Staff (Remote)

Patty Richards made a motion to approve the agenda as posted. The motion was seconded by Brian Otley. The agenda was unanimously approved.

II. Approval of February 13 and February 16 Meeting Minutes

The Board packet includes the minutes from previous meetings for 2/13 and 2/16. Patty Richards made a motion to approve the 2/13/2023 minutes, seconded by Brian Otley. The motion passed unanimously with three votes. Patty Richards made a motion to approve the 2/16/2023 minutes, seconded by Brian Otley. The motion passed unanimously with three votes.

III. Staff Updates

- *Christine Hallquist shared that WCVT is reducing their budget request by 1%. Christine is under the assumption that a reduction of 1% would not need approval. The Board agreed that a vote was not necessary.*
- **General VCBB Updates- Rob Fish**
 - i. *Working on letter of credit waiver - conditional waiver has been approved.*
 - ii. *General counsel hiring is delayed due to state system regarding.*
 - 1. *Holly Groschner offered that the Board letter of support/need might help move this forward, and Rob Fish will reach out if this is warranted based on progress by end of day.*
 - iii. *Broadband Project Developer has been re-opened.*
 - iv. *Regulatory and Compliance position has interviews scheduled this week.*
 - v. *NBRC grant changes were approved and are now in the state system for spending authority.*
 - vi. *FCC map challenge continues. 864 have been accepted, 15 overturned, and 20,974 are pending. Challenges are still being submitted to the fabric (location challenge).*
 - vii. *ZOOM will require us to have a meeting location, and Christine Hallquist is working on setting this up for the next meeting.*

1. *Holly Groschner requested an update on how VCBB staff are currently working remotely/telework. Christine Hallquist agreed to provide information in the weekly report to include the current state of teleworking.*

- **CUD Progress Updates – Lucy Rogers**

- i. *NWfiberx, Lamoille, and Otter Creek are still in the process of requesting construction grants.*
- ii. *Meetings with CUD ED regarding financial needs to make sure they have the support needed.*

- **Dashboard Review – Alissa Matthews**

- i. Allissa shared the dashboard with the new Board-approved amendments added.
- ii. Working with the Department of Education to update the school data. There are two schools in the state who report not having 100/100.

- **Communications & Media – Herryn Herzog**

- i. Herryn reminded the board that the press links are included in the weekly update and the website.

IV. **VCUDA Updates**

- Rob Vietzke gave an update on the three working groups:
 - i. **Financial management and services workgroup** is working on construction of a shared CEO position. This work has begun with mapping of existing functionality available to the CUDs. The mapping will be used to determine priorities.
 - ii. **Make-ready workgroup** is focused on coordination of access to rights-of-way and utility poles. There is a draft collaboration document that was shared with a utility company. They were receptive to streamlining the process.
 - iii. **Legislative policy committee** received a presentation from DC on the federal BEAD funding and how that might impact the way VT is currently functioning.
 1. IJIA was given the charge of a granting agency and technical assistance role, and it is assumed this will benefit VT.
 2. Rob shared that they are focusing on two legislative priorities: CUD employees to have access to retirement benefits and the letter of good standing from the Secretary of State.

V. **Northwest Fiberworx Preconstruction Grant Amendment**

- Sean Kio reported that they are requesting an amendment requesting the remainder of the pre-construction grant for operations for the next 18 months. A construction grant will follow. VCBB staff have reviewed and support the request. Holly Groschner requested that amendments be submitted in the context of the original request and inquired about the marketing plan due to the low line item and requested more information regarding the attorney line item. Sean shared that the budget work was updated based on the current expenses of the CUD. This funding covers the next 18 months of operations. The marketing budget is on the low side and for paper outreach activities. The advocacy is done by staff and board members currently. It will be the responsibility of the ISP to market the services when the time comes. The local council has several decades of experience in telecom. They are used for MOU development and contract review and shared that they have counsel out of DC for other legal needs. Patty Richards asked when the construction grant would be submitted. Sean reported they hope to bring that this spring. Patty Richards moved to approve the pre-construction amendment of the \$1,371,663.75. Holly Groschner seconded, and the motion was approved unanimously.

VI. **BEAD and Digital Equity Deep Dive**

- Lucy Rogers provided a presentation on the federal projects ([attached presentation](#)).

VII. **Open Policy Discussion**

- Christine requested that the Board provide policy items that they would like to discuss at a future meeting.
 - i. Laura Sibilía requested a financial policy discussion.
 - ii. Holly Groschner requested grant monitoring policy discussion.
 - iii. Lucy Rogers shared that a CUD is looking for clarity for minimum contract requirements for the partner subcontracts (operating agreements).
 - 1. Holly Groschner asked for a diagram of what was required the last time this was discussed when the topic is addressed.

VIII. Public Comment

- Rob Vietzke provided positive feedback on the BEAD and Digital Equity presentation.

IX. Parking Lot – *Christine Hallquist*

Christine Hallquist reviewed the parking lot items noting establishing policy to address enforceability of the partners of the CUDs. This has now been added to the policy discussion for a future meeting. Budget updates have been added to the Board meeting agenda and will be on-going quarterly. Patty Richards suggested the VCBB use enforceability standards to monitor and enforce the grant requirements. Laura Sibilía requested a commitment to complete this work prior to new grants.

X. Confirm Next Regular Meeting 4/10 & Motion to Adjourn

Patty Richards made the motion to adjourn, and Laura Sibilía seconded. The motion was unanimously approved and the meeting adjourned at 3:19.

Press inquiries; please contact Herryin Herzog, herryin.herzog@vermont.gov, (802) 522-3396

Vermont Community Broadband Board Meeting

Monday, April 10th, 2023, 12:00pm – 4:00pm

Minutes

I. Meeting Call to Order, Roll Call, & Approval of Agenda

Patty Richards called the meeting to order at 12:03 and completed roll call.

- Patty Richards, Chair (Remote)
- Laura Sibilila (Remote)
- Brian Otley (Remote)
- Holly Groschner (joined at 12:13)
- Dan Nelson (joined at 12:25)
- Christine Hallquist - Staff (Remote)
- Robert Fish – Staff (Remote)
- Alissa Matthews – Staff (Remote)
- Lucy Rogers – Staff (Remote)
- Kristin Brynga – Staff (Remote)
- Herryng Herzog – Staff (Absent)

Patty Richards made a motion to approve the agenda as posted. The motion was seconded by Brian Otley. Patty raised the fact that the draft minutes were not included in the packet and so the vote to approve them should be delayed. The adjusted agenda was unanimously approved with the removal of the approval of the March 13th minutes.

II. Approval of the March 13th Minutes (postponed)

III. Staff Updates

- Christine noted that staff is working on an extensive information request from the Wall Street Journal.
- **General VCBB Updates- Rob Fish**
 - i. There are proposed technical changes regarding Act 71 and language change in the Budget Bill to allow the Secretary of State to issue Certificates of Good Standing to the CUDs and also language being added to the Budget Bill to provide for the escrow account that is necessary for the Middle Mile application.
 - ii. There have been no additional clarifying questions asked regarding the Middle Mile Application. It should be in programmatic review at this stage of the process.
- **CUD Progress Updates – Lucy Rogers**
 - i. Lamoille, Northwest, and Otter Creek are still in process of contract negotiations and are making progress
 - ii. Chittenden County CUD has put out an RFP for support with contract solicitation and negotiation.
- **Dashboard Review – Alissa Matthews**
 - i. Alissa shared the new pre-construction and construction progress tracking dashboard.

IV. VCUDA Updates- Rob Vietzke

- VCUDA was pleased to announce that Chittenden County CUD is now a member, bringing total membership up to all ten CUDs.
- Construction season is about to ramp up so they expect to see good progress over the next few months.
- VCUDA conducted a survey across all the CUDs about how they are implementing their financial systems. This will allow them to better structure the shared service functions as part of their NBRC-SPISES grant.
- VCUDA has posted for a Junior Program Manager to help facilitate their working groups. The job posting can be found at <https://www.vcuda.org/careers>.
- The make-ready workgroup is continuing conversations regarding apportionment of cost. That work is ongoing and includes doing more background due diligence.
- Administrative
 - i. VCUDA found the auditor's report constructive and insightful and is starting to think about how to make improvements considering this feedback.
 - ii. Discussions have continued regarding having CUD employees join the Vermont municipal employee retirement program. It has been determined that employees can join without requiring any additional legislation.
 - iii. Met with the Secretary of State's office and they were able to determine that Certificates of Good Standing can be issued by their office to the CUDs. This is expected to help with federal grant applications.
- The discussion regarding how accountability can be increased across CUDs is evolving and is complicated, but everyone recognizes that the State's strategy of a community-based solution and bottom-up construct allows room for CUDs to implement local solutions. The fiduciary responsibility of the CUDs is seen as being consistent with the municipal boards. Discussions will be ongoing.
- Laura Sibilia inquired about any progress that has been made with discussions with the utilities pertaining to grid resiliency. Rob indicated that both the CUDs and electric utilities have major infrastructure projects underway in the next few years, and discussions are in progress regarding coordinating those projects, particularly regarding undergrounding a number of the rural routes to better protect them. Discussions are ongoing.

V. CVFiber Construction Grant Amendment

Christine indicated that CVFiber has requested an increase in their construction grant in the amount of \$1,910,845. CVFiber is expected to have a funding gap, and this request will assist them in moving into the next phase of their project by ordering long lead time materials. Additionally, there is funding for administrative expenses to keep their funding intact during the expected gap in funding. Jennille Smith, CVFiber, concurred with Christine's summary.

The Board asked the following questions:

- Patty Richards asked for additional information about Municipal Advisory and Underwriting Services line item.
 - i. Ray Pelletier, CVFiber, indicated that VCUDA is in the process of entering into the shared services contract with VCUDA once it is approved by VCUDA. Within that proposed contract Municipal Advisory services are included and there is also a need for bond counsel. They may also need to borrow some funds to help bridge the gap with funding in addition to the requested funding.

- Holly Groschner asked to clarify that the additional request is not to fund new activities but to instead provide funding to continue the same activities that currently have a funding gap.
 - i. Ray Pelletier responded that no new activities are included, and they are preparing for some of the phase II work that will begin in 2024.
- Holly Groschner inquired about the need for bond counsel at this early stage.
 - i. Ray Pelletier indicated that they have been given that advice by both underwriters and their municipal advisors, and this is part of exercising their fiduciary duties.
- Holly Groschner asked if filling the gap through construction funds will ultimately decrease the amount requested for BEAD funds or if that amount is just deferred.
 - i. Ray Pelletier indicated that it is just deferred. There are still many unknowns with BEAD funding.
- Holly Groschner asked staff if the original construction grant has been reviewed for compliance prior to making an expansion of that grant. She further asked if a review of the business plan is performed to ensure that the plan is still sustainable with the new request.
 - i. Kristin Brynga provided further explanation regarding the risk assessment process and monthly reporting review that is performed to ensure compliance both at a point in time and on an ongoing basis.
 - ii. Christine indicated that she reviews the business plan to ensure that it is still sustainable prior to bringing it to the Board for approval.
- Dan Nelson commented on the percentage of the increase and whether we expect this to be standard for other CUDs as well. He would like the Board to take this into consideration as they move forward.
- Patty Richards asked if there was a way to manage and minimize the amount of fees that the CUDs will need to pay for bond counsel and municipal advisory to help get them through the funding gap more efficiently.
 - i. Christine and Rob Fish indicated that there are many unknowns with BEAD and that the CUDs are all at different points with this process. CUDs have been encouraged to apply for funds from the NBRC and USDA that may help with this. There is also funding in the NBRC-SPISES grant with VCUDA that can be used to help with these shared services.
 - ii. Rob Vietzke indicated that VCUDA is working on this as part of their discussions on shared services as well and will likely have more information to share about this in a future meeting.

Patty Richards made a motion to approve CVFiber's Construction Amendment for an additional \$1,910,845 in funding. Laura Sibilia seconded. The motion was unanimously approved.

VI. Status Update on BEAD & Digital Equity RFP

- Lucy Rogers updated the Board on the RFP process for the contractor to help with BEAD/DE. The RFP closed on March 28th and the quality of the responses received was very good. The review team has been Lucy, Alissa, Christine, Hunter Thompson (the PSD Director of Telecom), and one member from the Digital Equity Core Team, Julie Abrahamson from State of Vermont Department of Disability, Aging, and Independent Living. A decision matrix was created and utilized in the independent scoring process. A group of top respondents were identified using this process and interviews are underway with those respondents.
- Lucy noted that the Digital Equity Officer position has been posted and is open until April 23rd. The job posting can be found at [Digital Equity Officer \(vermont.gov\)](https://www.vermont.gov/digital-equity-officer).
- Lucy updated the Board on the FCC challenge process. Of the 21,853 originally submitted, so far 2,678 have been upheld and 15 have been overturned. The process continues.
- Lucy updated the Board on the challenges faced with the timeline and lack of clarity from the NTIA. A long list of questions was submitted in February. A partial response was received on April 7th but

many are still outstanding. The main areas that clarification is still needed on are the requirements for match, understanding more about the state challenge process to the mapping requirements, understanding more about the letter of credit, and understanding what criteria can be used as gating and scoring criteria. Christine summarized that the VCBB will continue to provide weekly and monthly updates on this critically important issue and stressed that the VCBB staff are working very hard to get the BEAD program structured for Vermont in the way that reflects Act 71. She shared that an additional challenge is that the NTIA is still developing program specifics, and the VCBB team is trying to ensure Vermont's goals line up.

VII. Policy Discussion Regarding CUD Ownership and Operating Models

- Lucy Rogers presented a discussion about accountability per Act 71. The intent of the discussion is to influence accountability prospectively, not to make changes to existing fully executed grants and contracts. Staff did not bring forth a recommendation but rather requested the Board's thoughts on various scenarios. It was determined that further discussions would be held in future meetings.
- Laura Sibilia commented that Act 71 references accountability regarding when public funds are expended, that there is some guarantee of public service going forward and accountability for being able to hold entities accountable for both the service and the public funds. She indicated that we should never be put in a position where we have Vermonters reliant on a deteriorating asset and no ability to do anything about it and their ability to call for help being extremely jeopardized.
- Holly requested an opportunity to establish a Board policy to define accountability, specifically noting that a conversation at the Board level should occur which takes the staff's recommendations under consideration, but ultimately the policy that sets the standards for accountability should be something that the Directors have a consensus on. Patty asked Holly, with Laura's assistance, to outline thoughts to lead this discussion with the Board in a future meeting. Holly will work with Laura on this and will discuss this with Lucy pre-meeting as well.

VIII. Discussion of the Report from the Auditor's Office

- Christine provided a general summary indicating that staff appreciated the feedback from the State Auditor's Office and that staff is generally in agreement with most of the items in the report. The risks identified are known and steps are already being taken to comply with some of the noted recommendations.
- The Board and staff members discussed the talking points that were provided as part of the testimony at the Senate Finance Committee hearing. There was further discussion as to what the appropriate procedures are for responses to reports of this kind and what the Board involvement should be with providing responses. Discussions on these items will be ongoing.
- Holly Groschner asked what criteria in the auditor's report do the directors of the VCBB want to have staff develop an action plan for? An action plan should be created to address the identified criteria and recommendations.
- Patty confirmed that an action plan would be useful to address issues that were highlighted over the next year or two. Additional discussions and follow-up will occur in a future meeting.

IX. Public Comment

- Ann Manwaring commented on the legislative intent to have the work to implement the goals be done at the local level. The auditor's report was not from that perspective but rather only from the perspective of the State. She would like to see this perspective taken into consideration when the action plan is drafted.
- F.X. Flinn commented that he feels the auditor missed the fact that the broadband businesses are competitive and unregulated and that governmental entities like the CUDs are typically never in a situation where they own that kind of a business. EC Fiber has pioneered the effort in Vermont and

has eight years of experience subject to all of Vermont's transparency laws and owns a business that competes in the marketplace and has been dealing with that balance. He added that he thinks that that the auditor really missed a very key thing in terms of his analysis of what's going on.

X. Parking Lot – *Christine Hallquist*

- Christine Hallquist reviewed the parking lot items noting establishing policy to address enforceability of the partners of the CUDs. This has now been added to the policy discussion for a future meeting.
- An action item will be added for a Board position to be created in response to the Auditor's report.
- Holly asked for confirmation that general counsel had been hired. Christine confirmed that to be the case and Toni Clithero, who was on the call, introduced herself as the new general counsel.

XI. Confirm Next Regular Meeting 5/8 & Motion to Adjourn

- Patty Richards made the motion to adjourn, and Holly Groschner seconded. The motion was unanimously approved and meeting adjourned at 2:02pm.

Memorandum

To: **VCBB Board Members** - Dan Nelson, Vice Chair; Holly Groshner; Brian Otley; Laura Sibilia

From: VCBB Board Chair, Patty Richards

Date: May 2, 2023

RE: Draft Outline VCBB Board Response to State of Vermont Auditor's report

Cc: Christine Hallquist, VCBB Executive Director

Introduction

The Vermont State Auditor's office issued an investigative report dated March 21, 2023 regarding its review of the VCBB process and provision of universal broadband in Vermont. The report was completed by Ilan Weitzen, Government Research Analyst and is labeled as *Investigative Report 23-03*.

A copy of the report was sent to all VCBB Board members by staff on March 21, 2023 (upon release), and it was provided in the April VCBB board packet for review in preparation for the board meeting on April 10, 2023. At the regular meeting of the VCBB on April 10, 2023, staff provided a brief overview of the report, and a discussion was held regarding staff's response to the report which was provided to the legislature.¹

As stated in the auditor's document, "The risks identified in this report do not represent an exhaustive list, but represent factors that, if left unaddressed, could jeopardize Vermont meeting its broadband goals. The risks below represent threats to Vermont's ambitious plan to utilize the CUD model to deliver universal, affordable broadband access to every Vermont address. These risks are informed by our review of CUD contracts and grant agreements, VCBB, Vermont Communications Union District Association, and CUD board meeting minutes and materials, dozens of interviews, and relevant legislation."

This important report comes at an opportune time. VCBB Board members recognize the past two years have progressed rapidly. We have accomplished important and early work toward our mission to accelerate community efforts that advance the State's goal of achieving universal access to reliable, high-quality, affordable, and fixed broadband. That said, it is important to pause and reflect. With the auditor's report in hand, we have an opportunity to be thoughtful, organized, and strategic. We have all at times stated we wished we had time to develop policies

¹ Staff did not provide an official response to the auditor. The response document was prepared for the legislature. Staff's work with the Auditor's office was interactive during the investigation. Staff did provide the auditor with a copy of talking points planned to use at Senate Finance as a courtesy. Since the process had been collaborative from the beginning, staff wanted to be sure not to surprise the auditor with the factsheet provided during testimony.

and processes to make our grant issuance and administration more effective. It is now time to tackle this important initiative.

The report astutely identifies issues. It is the Board's intent to use this information constructively by identifying necessary procedures, standards, and policies that are needed to assure the best use of grant funds into the future. Our goal is to leverage the information provided in the report and to use it in a manner that will help assure grant dollars are being used effectively. Our goal is to tackle each risk and prepare a Board response including comments and possible policies needed to address the risks identified in a constructive manner.

Next Steps

Ten risks were identified in the auditor's report. To follow is a summary of each risk including staff's response to each item. As Board members of the VCBB, we believe it is important to digest and then formulate a Board response to the risks identified. As VCBB Board chair, I agreed to develop a draft response to get us started and to begin a dialogue with all Board members and staff.

The intent is to leverage the insights gathered by the auditor's office and formulate a plan for next steps. This information is intended to help us prepare for future actions that may be necessary to carry out our important mission of deploying high speed internet access in Vermont.

This effort will take time to synthesize and it will also take time to carry out results. In order to do this work, we need to address each risk, formulate a plan, and then set up timelines to address each item. Being strategic in our efforts is critical at this juncture to assure we get it right. We seek to maximize the use of the valuable funds being received in Vermont for Vermont's residents. The next steps are intended to be constructive and organizing rather than to criticize or pass judgment on any of our efforts. The intent is to formulate needed policies and standards where none exist or more content is needed. After we identify policy and procedures that are needed, we will map out a plan and timeline to complete this important work.

Risk Overview and Response

Risk 1: Some CUDs Face a Potential Construction Funding Gap in Calendar Year 2024 Which Could Halt Construction Mid-stride if Additional Funds Are Not Identified

Staff Response:

- VCBB (staff) is meeting with each CUD to build contingencies for this risk.
- There are multiple plans and opportunities to address any gaps. To highlight just a few of them:
 1. **NTIA Middle Mile Program.** If awarded, this federal grant will provide Vermont with \$117M and cover the construction of much of the Middle Mile infrastructure that needs to be built by the CUDs to complete their universal service plans.

2. The **Northern Borders Regional Commission** issued their RFP for the **Catalyst Program**. All CUDs are being encouraged to apply for this funding which will help with the funding gap. If a CUD receives the grant, it will arrive in early fall mitigating risks associated with the potential gap. The grants are up to \$3M.

3. **USDA Connect Communities**. USDA is currently accepting applications for grants to build community-oriented, high-speed internet networks for people in rural areas. The Department is making up to \$79 million in grants available federally under the Community Connect program.²

Board Response:

- Staff determine which CUDs face funding gaps and measure the gap for each entity to determine how much is needed.
- Establish Gap Fund for financial coverage using grants noted by staff
- Prior to receiving gap funds, CUDs must demonstrate fiscal accountability with respect to use of past funds. VCBB staff will be instructed to create a review process and assure past funds have been appropriate.
 - Appropriate checks and balances needed for gap fund coverage
 - VCBB staff develop compliance checking standards matrix for this effort
- Policy Implications (identify policies needed as a result of this risk)
 - Create Gap Funding Policy (standards to obtain funds, accountability of CUD including reports and demonstration of appropriate use of past funds, if funds provided how future funds treated)

Risk 2. CUDs May Struggle to Access Needed Construction Materials

Staff Response:

- In Fall 2021, the state facilitated an agreement between the CUDs, the Vermont Community Foundation, and the Vermont State Employees Credit Union in which the CUDs obtained a Letter of Credit allowing them to prepurchase over 2,000 miles of fiber optic cable. Lead times for the purchase of eligible, domestically produced, fiber optic cable are currently as high as 52 weeks. Prices for purchase in 2022 were 30-40% higher on average than the prices the CUDs accessed with this deal, saving over \$2 million.
- The VCBB (staff) has continued this approach through the PrePurchase of Specified Lead Time Materials grants. The VCBB (staff) set aside \$4M for this

² According to Christine Hallquist, there is also a new VCLT loan program and the 10% for Vermont Treasury Program. She is encouraging CUDs to explore the bond market earlier. This gap and the inability of at least one CUD to have the capacity to submit and LOI has intensified staff's search for additional fundraising capacity.

effort, which can be used to access fiber and other long lead time materials. VCBB (staff) recognizes that the long lead times on fiber optic construction materials is a national challenge and continues to engage with partners to mitigate this risk.

Board Response:

- What other items can VCBB help to prepurchase
- What is VCUDA's Role and how much can they do in the future?
- Policy Implications (identify policies needed as a result of this risk)
 - Develop Joint Purchase Policy

Risk 3. Construction May be Slowed by a Lack of Qualified Construction Workers

Staff Response:

- VCBB (staff) is mitigating this risk by staying ahead of other states with our Workforce Development Plan, which has been in the works since September 2022. Maintaining this advantage is key to addressing both the materials and the labor challenges every state will be experiencing considering the amount of federal money going into fiber broadband expansion.
- VCBB (staff) has been holding ongoing meetings with the electric utilities, who are helping provide necessary resources through third-party contractors.

Board Response:

- Leverage skills and staffing available in Vermont (assess what resources currently exist in this space, talk to leaders with these resources to determine if sharing of workers is possible, time construction with electric work to streamline and minimize expense)
- Policy Implications (identify policies needed as a result of this risk)
 - Develop Workforce Development Policy and coordinate with current plans pertaining to this topic

Risk 4. The Tension Between the VCBB (staff) Supporting the CUDs and Ensuring They are Viable Risks Allowing Any Weaknesses in CUD Business Plans to Persist and Deepen

Staff Response:

- VCBB (staff)'s job is to encourage the CUDs to be both dynamic and pragmatic in their construction and business plans. This pragmatism may require the CUDs to adjust build plans, pursue partnerships, or even pursue mergers with other CUDs. Every CUD has already shown the ability to make hard choices and shift plans as

circumstances change. VCBB (staff) and the CUDs accept that a tension inherently exists.

- Our Executive Director, who has a track record of turning around businesses and making them successful, monitors and meets with each CUD. These meetings ensure that contingency plans are in place to cover all conceivable challenges.

Board Response:

- Require CUDs to coordinate construction schedules with electric and other pole owning utilities
- Business Plan scoring matrix – Review and identify areas to improve
- Policy Implications (identify policies needed as a result of this risk)
 - Business Plan Policy (include standards and requirements)

Risk 5. Reliance Upon CUDs with Varying Levels of Expertise and Capacity May Delay Broadband Service to Some Vermonters, Lead to Increased Spending, and Establish Inequitable Policies and Access

Staff Response:

- The VCBB (staff) has worked hard alongside the CUDs to ensure that they now have robust staffs in place with high levels of expertise.
- The CUDs have always made decisions with the assistance of experienced consultants. Capacity and expertise for the CUDs were the focus of both the Broadband Innovation Grant program and the PreConstruction Grant Program. Now that most CUDs have progressed past their initial start-up phase, additional scrutiny and requirements have been implemented to ensure Construction Grant funds are only awarded to grantees with adequate oversight in place.
- **Bullet one: affordability-** ACP participation is required as a gating criterion for grantees. VCBB (staff) is aggressively seeking additional grant funds (FCC Challenge) and waivers (BEAD) with the purpose of increasing public funding and therefore decreasing cost of monthly service to customers. VCBB (staff) is also actively leading on Vermont's digital equity efforts.
- **Bullet two: CUD self-attestations** – Act 71 charged the VCBB (staff) with monitoring, developing, and funding the CUDs' capacity, so the VCBB (staff) is well aware of the status of these efforts. From the early stage of CUD development, corroborative inquiry, along with the CUDs' presentations and interviews with VCBB (staff)'s Board and the compiled knowledge of VCBB (staff) staff working to build these groups from their inception, were and are valid and necessary tools to assess capacity, financials, reporting adequacy, and guide judgments of funding awards.
- As the CUDs have matured, they have been required to provide the VCBB (staff) with confirmation of Financial and Monitoring Controls in compliance with the provisions of their grant agreements. Additionally, internal control assessment is included within the proposed Compliance review Framework that the VCBB (staff) is developing. Further, in 2022 most grantees exceeded the \$750,000 expenditure

threshold, requiring a Single Audit be performed. As such, internal control review will be performed as part of the Single Audit process with all Single Audits undergoing review by the VCBB (staff) once complete. If any findings should be presented, a corrective action plan will be required, and a Decision Management Letter will be issued by the VCBB (staff) with corrective actions reviewed for appropriate remediation.

- **Bullet three: CUD flexibility** – VCBB (staff) was created to support CUDs and ensure the oversight and accountability objectives of Act 71, but VCBB (staff) was not designed to formally regulate. Under State Law, CUDs are independent municipal organizations governed by a representative body, and our programs respect that CUD decisions reflect the will of the communities they serve.
- **Bullet four: take rates** – VCBB (staff)’s aggressive work on digital equity is intended to lower barriers to accessing broadband service across demographic and geographic differences. Every Vermonter deserves access to broadband; take rates should ultimately reflect need as digital equity work progresses.
- **Bullet five: CUD reports** – VCBB (staff) is standardizing grant reporting and implementing a new grant management system. VCBB (staff) also just made an offer to a candidate to fill the position of Director of Regulatory Compliance and Grant Management to further focus on this issue.

Board Response:

- Create CUD Oversight & Accountability Plan. The recommended oversight plan includes a combination of desk and on-site monitoring methods, including compliance with:
 - CUDs’ statutory requirements in terms of governing board composition and competency, meeting records, bylaws.
 - Federal administrative requirements such as conflict of interest policies, cost allocation methodology, and procurement and internal control processes.
 - The VCBB has also updated its monthly reporting requirement to obtain consistent, timely, and salient information from CUDs.
 - The VCBB’s (staff’s) 2023 Legislative Report indicates that existing grant agreements address methods to support low-income and disadvantaged communities. The auditor did not find language in the agreements. Add appropriate language to grant agreements.
 - The VCBB (staff) has relied, in part, on surveys and self-attestations from the CUDs regarding their own capacity, financials, and reporting when considering funding awards despite their high-risk classification. Self-attestations fall far short of the verification standard detailed in the Department of Finance and Management’s *Internal Control Standards: A Guide for Managers*.
 - Despite its broad powers to be more directive, the Board has given CUDs freedom to make business decisions that vary in terms of staffing, cost, strategy, negotiations, and public disclosure/confidentiality. As a result,

CUD activities may not always reflect the most efficient and publicly beneficial use of public funds.

- At least two CUDs based their initial business plans upon the anticipated service take rate and financials of *another* CUD even though they have different demographic and geographic concerns.
 - Though their grant agreements require monthly reporting to the VCBB, multiple CUDs submitted reports that were late and lacking useful detail with regard to scope and scale.
- Policy Implications (identify policies needed as a result of this risk)
 - CUD Oversight & Accountability Policy
 - Affordability Definition

Risk 6. With the Exception of the Early VCBB (staff) Fiber Purchase, CUDs Have Not Been Partnering for Procurement of Goods and Services, Risking Higher Costs and Inferior Outcomes

Staff Response:

- The Fiber purchase is not the only example of CUDs working together or the VCBB (staff) providing shared services. VCBB (staff) has made available shared legal and regulatory assistance and has provided support for VCUDA to convene the CUDs bi-weekly to share notes and best practices. VCBB (staff) is also currently in the process of implementing a suite of shared services to provide additional expertise and cost efficiencies to the CUDs.

Board Response:

- Develop shared service minimum standards (accounting, administrative support, legal, marketing, etc.). To avoid risk of overpaying and wasting grant resources, each CUD must comply with minimum standards when it pays for the same goods and services. Encourage joint sharing where appropriate and cost effective which also limits the benefits of sharing the highest quality vendors to perform comparable analysis and functions.
 - VCBB must decide whether it wishes to *require* CUDs to jointly purchase fiber optic cable as a condition of funding or to use a shared grant administrator.
 - Encourage Shared Services through VCUDA similar to latest effort funding by Northern Borders Grant. The stated goals of the program include ensuring efficiency, accountability, and resilience in the face of market challenges. The grant will fund positions for experts in the field who will mostly be housed at VCUDA. These new “shared” staff will conduct a needs analysis of shared services and will support CUDs in

program management, policy analysis, accounting, communications, and make ready support. These roles have been funded for \$2.1 million across three years. The VCBB and VCUDA project that after year three CUD revenues will be sufficient to sustain the shared positions.

- Policy Implications (identify policies needed as a result of this risk)
 - Shared Services Policy

Risk 7. Statutory Confidentiality Provisions Shield Some CUD Decision-making from the VCBB (staff), Policymakers and Residents of the Member Municipalities Despite Receiving Tens of Millions in Public Funds

Staff Response:

- CUDs have never withheld any decision-making information from the VCBB (staff). The CUDs have been forthcoming with information and have always released confidential documents to the VCBB (staff) upon request and with assurances of maintained confidentiality as allowed under law.
- CUDs follow Vermont's open meeting law and public records law, just like any other public body. CUDs are not afforded any additional confidentiality provisions beyond the standard public records exemptions.
- The design of the CUDs is far more transparent and provides far more accountability than past models of broadband internet buildout, where private providers had no disclosure requirements.

Board Response:

- Develop standards as to what is deemed confidential (encourage transparency in all elements of CUD presentation and decision making).
- List of items that qualify as confidential should be very limited to encourage transparency and best practices.
- Policy Implications (identify policies needed as a result of this risk)
 - Confidentiality Policy

Risk 8. Lack of Affordability Definitions and Requirements Threaten to Reduce Service Connections, Undermine CUD Business Plans, and Create Regional Inequities

Staff Response:

- VCBB (staff) is aggressively seeking additional grant funds (FCC Challenge) and waivers (BEAD) with the purpose of increasing public funding and therefore decreasing cost of monthly service to customers. The unserved areas in CUDs are expensive to serve, and that is why they remain unserved. Every \$50 million in grants that Vermont secures can cut customer costs by \$10/month.

- VCBP (staff) is monitoring and leading on affordability and digital equity issues, and there may be a need for legislative action in the future.

Board Response:

- Define Affordability
- Require CUDs to make consumers aware and help consumers leverage the Affordable Connectivity Program (ACP) administered by the FCC-limits assistance to households with incomes below 200% of the poverty line to a subsidy of \$30/month to help pay for internet service.
- Policy Implications (identify policies needed as a result of this risk)
 - Affordability Definition

Risk 9. The Firm the VCBP (staff) Employs to Evaluate CUD Business Plans Has Also Consulted for a CUD and Does Not Appear to be Prohibited from Consulting for Others, Raising Conflict of Interest Risks

Staff Response:

- In the summer of 2021, CTC did two small projects for a CUD. CTC has declined any work for CUDs since becoming a contractor for the VCBP (staff) and will not bid on future individual CUD work while retained by VCBP (staff).

Board Response:

- Policy Implications (identify policies needed as a result of this risk)
 - Conflict of Interest Policy

Risk 10. BEAD's Irrevocable Letter of Credit Requirement is Not Designed for New and Small Telecommunications Entities

Staff Response:

- VCBP (staff) agrees this a major threat inherent within the National Telecommunications and Infrastructure Administration (NTIA)'s BEAD requirements. As it currently stands, the Letter of Credit requirement makes it incredibly difficult for small ISPs or public entities to participate in the BEAD program.
- The VCBP (staff) is investigating every possible avenue to resolve this issue, including aggressively pursuing waivers and exemptions with the NTIA. VCBP (staff) has yet to receive clarity from the NTIA, and waivers will not be issued until

- there is an actual proposal submitted. VCBB (staff) has also engaged financial institutions to learn about the viability of providing such letters.
- VCBB (staff) has engaged our congressional delegation and other states' broadband offices and has provided feedback to the NTIA that funds would be better directed toward serving individuals with broadband than purchasing letters of credit.
 - For Vermont's Middle Mile Program application, VCBB (staff) worked with the State Treasurer and the legislature to provide the NTIA with substantive, but not technical, compliance to the requirement in the form of a properly condition escrowed account. It is possible that this solution could satisfy the NTIA for the BEAD program. VCBB (staff) will keep the legislature updated as we gain more clarity on possible solutions.

Board Response:

- Staff Response is thorough and Board continue to encourage this work
- Policy Implications (identify policies needed as a result of this risk)
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In addition to the Auditor's risk assessment VCBB should tackle other policies and framing decisions to steer us toward systematic and logical next steps. We need to assure dollars are being used in a manner that maximizes benefits to Vermonters. What other policies are needed at this time:

Additional Policies:

- Customer Service Standards Policy

#	Priority	Item	Date entered	Assigned to	Resolution and date
35	1	Patty Richards to lead the Board in a response to the auditor's report	04/10/23	Board	
36					
26	1	Establish policy to address issue of enforceability with any of the partners and the CUDs.	8/22/22	CH	Policy discussion to be held at 4/10/23 meeting. This is now part of the Board Policy discussions related to the Auditor's report.
29		Include placeholder for budget update, dashboards, and policy and goals discussion to all Board Meeting Agendas	11/03/22	CH	Budget and Dashboards addressed at January and February Board Meetings Christine will confirm with Patty what Board expectations are for the policy and goals discussion
24	1	Invite to the Federal Delegation to future Board Meeting	8/8/22	CH	Delegation will be invited to the January Board meeting
22	3	VCBB's approach to mapping and strategy for challenging the FCC.	6/14/22	CH	Presented initial strategy 12/12/22. A Federal Program Officer at the NTIA will be needed to work on this with and that has finally been announced as Clay Purvis from the Public Service Department. He will be invited to January meeting.
28		Finalize subsequent overbuild policy and data policy.	10/31/22		This is addressed in the VCBB Data and Overbuild Policy submitted to the Board for continued discussion at the 12/12/22 meeting.
32		Alignment of VCBB Mission Statement based on Act 71	11/14/22		Patty Richards to lead this 12/12/22.
25	2	Host workshop for the CUDs on Uniform Guidance	8/8/22	CH	Completed December 7th
30		Adjust timing of Board Packet to at least 5 business days before the Board Meeting	11/03/22		Plan to start new schedule in January
33		Create a Communication Procedure Plan for Board notifications of updates from Staff (press releases, legislative presentations,	11/14/22		Completed in the November 28 Board meeting.

34		Discussion regarding development of a separate website			Staff recommends we continue with the current website which follows state protocols.
27		Board requested that a grant agreement template be shared	10/31/22		Item closed – agreement was shared
23	1	Define audit criteria and post award grant reporting and review process for grantees/CUDs	8/8/22	CH	Item Closed - Compliance Recommendation Memo presented October 31 st . Additional reporting requirements will be shared once the new form is updated and staff will create a dashboard for tracking.
18	1	Signature Authority of Executive Director	03/28/22	CH	Closed. Approved in July.
19	1	Policy around hiring staff	03/28/22	CH	Closed. Approved in July.
21	1	Invite to Doug Farnum to future Board Meeting	6/14/22	CH	Attended August 8 th meeting.
20	3	Recommendation for designation of an entity for Digital Equity & Affordability Office	03/28/22	CH	Closed. This is being addressed by the Governor's office per a directive from the NTIA. This falls into the responsibility of the VCBB as a subset of the IJA program.
8	2	Policy on "Material Default" see §8086(c)(2)	11/1/21	board	Closed. Issue has been resolved through legislation.
5	3	VCBB Dashboard – to be shared monthly to show progress. What are the milestones?	11/1/21	CH	Closed. Stone Environmental has presented its proposal and the software platform meets the needs.
16	1	Provide Board with impact of Commitment letter	02/14/22	CH	Closed with material pre-purchasing proposal.
17	2	Statewide marketing collaboration with VCUDA	02/14/22	CH	Closed. VCUDA is not interested.
15	2	Provide Benchmarks for what telecom companies spend on Marketing	02/14/22	CH	Will research and present back on 3/14/22 Board meeting
1	1	Budget	10/18/21	CH	Completed. 2021 budget approved. 2022 will be presented in March.
2	1	Overbuild – what is the standard (20% of total served?)	11/1/21	CH	Completed. See Construction RFP Definition
3	2	Business Plans – what is the scope? Will they be updated before construction grants?	11/1/21	CH	Completed. The updated business plans will be included in the Construction RFP responses.

6	3	Fiber purchase – VCBB involvement? authorization? Status?	11/1/21	CH	Completed
7	1	Make Ready Construction – policy: part of §8085 grants or not?	11/1/21	board	Policy established. Make ready construction will be part of the construction grant program.
9	2	Revisiting timeline for VCBB – construction RFP & reporting timelines	11/22/21	RF	Completed. Part of the construction RFP. RFP approved by the Board on 01/03/22
10	2	Sequence assumptions for preconstruction and construction & reporting timelines	11/22/21	CH	Completed. Part of the Construction RFP. RFP approved by the Board on 01/03/22
11	2	DPS 2021 Map – Unserved	11/1/21	CH& board (LS)	Completed
12	1	Confidentiality. Grant Agreement Art 5 (state standard). Is the product of a grant a “public document” – e.g. will we post construction plans?	11/1/21	CH/Legal	The RFP and construction schedules will be public.
13	2	USP & contiguous CUD construction- policy	11/22/21	Board LS/HG	Completed. Addressed in the Construction RFP.
14		Legislative Consideration – Purchase of consolidated services/goods	11/29/21		Not needed.