

## Buncombe County Agenda Item Information Sheet

<b>AGENDA ITEM:</b> <b>RESOLUTION AMENDING THE TITLE VI PLAN FOR MOUNTAIN MOBILITY AND AUTHORIZING THE CHAIRMAN TO EXECUTE A TITLE VI POLICY STATEMENT AND U.S. DOT TITLE VI ASSURANCES FOR MOUNTAIN MOBILITY</b>	
<b>MEETING DATE:</b> May 15, 2018	
<b>REQUESTED BY:</b> Nathan Pennington, Planning Director Matthew Cable, AICP, Planner III	
<b>Background information</b> <p>Buncombe County is designated as the applicant for federal and state funding to support the provision of transportation services provided through Mountain Mobility, Buncombe County's Community Transportation System. As a recipient of federal and state funds, Buncombe County is required to adopt a Title VI Plan and Policy Statement and provide the required assurances and certifications required by the North Carolina Department of Transportation (NCDOT) and Federal Transit Administration (FTA).</p> <p>A Title VI Plan for Mountain Mobility has been in place since 2008 and applies to all services and programs provided through Mountain Mobility, whether carried out by Buncombe County directly or through any contractor or other entity with whom Buncombe County arranges to carry out its programs and activities. The Title VI Plan requires a review and update, at minimum, each three (3) years. The last plan update occurred in May 2015. Updates to the Title VI Plan ensure compliance with current state and federal guidelines and regulations.</p> <p>Buncombe County Planning and Development staff, in coordination with Mountain Mobility Administration staff, prepare and recommend updates to the Title VI Plan. A detailed summary of all amendments is provided in the Management Review Report. The Title VI Plan, with tracked changes, is available upon request.</p> <p>Staff requests the Board of Commissioners formally resolve to amend the Title VI Plan to remain in compliance with NCDOT requirements and federal regulations.</p>	
<b>Pro's</b> <ul style="list-style-type: none"> <li>• Adoption is required in order to receive continued federal and state funding for the administrative, operational and capital needs of Mountain Mobility.</li> <li>• Adoption will facilitate compliance with federal regulations such that all language in the local policy and all language in the plan are consistent with federal regulation.</li> <li>• Adoption helps to ensure the protection of all citizens in accordance with Buncombe County's nondiscrimination policies.</li> </ul>	<b>Con's</b> <ul style="list-style-type: none"> <li>• None</li> </ul>
<b>Funds required in current budget:</b> None	
<b>Funds required in future budgets:</b> None	
<b>Alternatives</b> None	

**Action recommended:**

Adopt the Resolution Amending the Title VI Plan for Mountain Mobility and authorize the Chairman to execute the Title VI Policy Statement and US DOT Title VI Assurances for Mountain Mobility.



# Buncombe County Government

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## **Planning and Development**

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**Planning Director**

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## **Mountain Mobility Title VI Plan Management Review Report**

### **Background and General Information**

The Mountain Mobility Title VI Plan was updated and adopted by the Buncombe County Board of Commissioners on May 5, 2015. A review is required each three (3) years, at minimum, to ensure all information is current.

Buncombe County Planning and Development Staff and the Mountain Mobility Administration staff participate in an ongoing implementation of the Title VI Plan. Recommended updates are outlined by the Mountain Mobility Administration staff to reflect current federal regulations. The Mountain Mobility Administration staff prepare a Management Review Report for review by Buncombe County.

Buncombe County Planning and Development staff review the Management Review Report to ensure proposed updates are appropriate and reasonable. All Mountain Mobility Administration recommended updates are acceptable to staff, will ensure consistency with current federal regulations, and will improve implementation of the Title VI Plan.

The Mountain Mobility Administration staff Management Review Report was completed and the proposed revisions to the Title VI Plan were presented for review by the Buncombe County Community Transportation Advisory Board (CTAB) at its regular meeting on May 3, 2018.

### **Conclusion**

Existing Title VI Plans manuals will be updated immediately following approval of the recommendations presented in this report by the Buncombe County Board of Commissioners. This 2018 Management Review Report and a copy of the revised Mountain Mobility Title VI Plan will be submitted by Buncombe County to the NCDOT Public Transportation Division and NCDOT Office of Civil Rights for acceptance.

# May 2018 Management Review Report

## Recommendations for Title VI Plan Revisions

The Mountain Mobility Administration staff participate in a regular review of the Title VI Plan and the associated Public Involvement and Language Assistance Plans, at minimum, each three (3) years. The Mountain Mobility Administration staff began a formal review of the Title VI Plan (and its incorporated Public Involvement Plan and Language Assistance Plan) in January 2018. Buncombe County Planning and Development Staff and Mountain Mobility Operations staff also had the opportunity to review and provide comment on the Title VI Plan. All of the recommendations were compiled beginning in March 2018.

General recommendations were included that apply throughout the plan. These included updated links to the Buncombe County website contact information (phone numbers and emails) as appropriate and necessary. The principal changes to the document, beyond these nonsubstantive changes, were to incorporate updated 2011-2015 American Community Survey data principally into the Public Involvement Plan and Language Assistance Plan.

## Title VI Policy Statement

- Update statement with signature from new Board of Commissioners Chairman.

## Title VI Program for Mountain Mobility

### I. General Description of Program and Plan Contents

- Update the list of federal funds for which Buncombe County is a recipient or subrecipient, removing Section 5316 and 5317 program funds which are no longer FTA programs.

**II. U.S. DOT Title VI Assurances (Appendix A)** - No substantive modifications are proposed.

**III. Title VI Notice to the Public (Appendix B)** -No substantive modifications are proposed.

**IV. Title VI Complaint Procedures and Reporting (Appendix C)** -No substantive modifications are proposed.

### V. Title VI Program Administration (Appendix D)

- Identify the "Executive Official" for Buncombe County as Nathan Pennington, Planning Director (replacing Jon Creighton).

### VI. Public Involvement Plan (Appendix E)

- Incorporation of current American Community Survey 2011-2015 data to best describe the population with limited English proficiency (LEP).

### VII. Language Assistance Plan for Limited English Proficiency Populations (Appendix F)

- Incorporation of current American Community Survey 2011-2015 data to best describe the population with limited English proficiency (LEP).

### Subrecipient Monitoring (Appendix G)

- No substantive modifications are proposed.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING REVISIONS TO THE TITLE VI PLAN FOR MOUNTAIN MOBILITY AND  
AUTHORIZING THE CHAIRMAN TO EXECUTE A TITLE VI POLICY STATEMENT  
AND U.S. DOT TITLE VI ASSURANCES FOR MOUNTAIN MOBILITY**

WHEREAS, Title VI of the Civil Rights Act of 1964 states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 USC Section 200d); and

WHEREAS, Buncombe County does not discriminate on the basis of race, color, religion, sex, national origin, handicap, or disability in admission or access to, or treatment or employment in, its services, programs, and activities; and

WHEREAS, as a recipient of federal and state funds for Mountain Mobility, Buncombe County's Community Transportation System, the County is required to adopt a Title VI Plan and Policy Statement and provide the required assurances and certifications required by the North Carolina Department of Transportation and Federal Transit Administration; and

WHEREAS, a Title VI Plan for Mountain Mobility has been in place since 2008 and applies to all services and programs provided through Mountain Mobility, whether carried out by Buncombe County directly or through any existing or potential contractor or any other entity with whom the County arranges to carry out its programs and activities; and

WHEREAS, updates to the plan are needed in order to be compliant with current state and federal guidelines and regulations; and

WHEREAS, the Board of Commissioners feels it is in the best interests of the citizens of Buncombe County to adopt an update to the Title VI Plan to ensure the protection of all citizens in accordance with Buncombe County's established nondiscrimination policies.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That the Board of Commissioners hereby approves and adopts the Title VI Plan for Mountain Mobility, Buncombe County's Community Transportation System, included as Exhibit A.
2. That the Chairman be and he is hereby authorized to execute the Title VI Policy Statement included as Exhibit B.

- 3. That the Chairman be and he is hereby authorized to execute the U.S. DOT Title VI Assurances included as Exhibit C
- 4. That this Resolution is effective upon its adoption.

Adopted this 15th day of May, 2018.

ATTEST:

BOARD OF COMMISSIONERS  
FOR THE COUNTY OF BUNCOMBE

\_\_\_\_\_  
Kathy Hughes, Clerk to the Board

By: \_\_\_\_\_  
Brownie Newman, Chairman

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

## **Title VI Policy Statement**

### **Mountain Mobility, Buncombe County's Community Transportation System**

Title VI of the Civil Rights Act of 1964 states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (*42 USC Section 200d*).

The County of Buncombe does not discriminate on the basis of race, color, religion, sex, national origin, handicap, or disability in admission or access to, or treatment, or employment, in its services, programs, and activities.

This policy shall apply to all services and programs associated with Mountain Mobility, Buncombe County's Community Transportation System, whether carried out by Buncombe County directly or through any contractor or other entity with whom Buncombe County arranges to carry out its programs and activities.

Further, it is the policy of the organization to assure full compliance with federal and state provisions, including but not limited to: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Civil Rights Restoration Act of 1987, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency, and other similar protections against discrimination that are or may be addressed in regulations issued by the U.S. Department of Transportation.

Any person who believes they have been mistreated by an unlawful discriminatory practice under Title VI has a right to file a formal complaint. Any such complaint must be in writing or in person within one hundred eighty (180) days following the date of the alleged discrimination occurrence. Complaints must be filed with Mountain Mobility Administration, c/o Land-of-Sky Regional Council, 339 New Leicester Highway, Suite 140, Asheville, NC 28806, Attention: Mountain Mobility Title VI Coordinator; or may be filed with the N.C. Department of Transportation, Office of Equal Opportunity and Workforce Services, 1511 Mail Service Center, Raleigh, NC 27699-1511.



Buncombe County Board of Commissioners

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By Brownie Newman, Chairman

## U.S. DOT TITLE VI ASSURANCES

The County of Buncombe (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent 'directives, no person in the United States shall, on the grounds of race color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the Federal Transit Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its Community Transportation System, Mountain Mobility:

1. That the Recipient agrees that each "program" and each "facility as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all Community Transportation System, Mountain Mobility, and, in adapted form in all proposals for negotiated agreements:

The County of Buncombe, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, 'as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.



5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under its Community Transportation System, Mountain Mobility; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under its Community Transportation System, Mountain Mobility.
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient by the Department of Transportation under the Community Transportation System, Mountain Mobility and is binding on it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest and other participants in the Community Transportation System, Mountain Mobility. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

Dated May 15, 2018

County of Buncombe  
(Name of Recipient)

By

\_\_\_\_\_  
Brownie Newman, Chairman, Buncombe County Board of Commissioners

\_\_\_\_\_  
County Attorney

Attachments:  
Appendices A, B, C

## APPENDIX A TO TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

**(1) Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**(2) Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**(4) Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County of Buncombe or the Federal Transit Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the County of Buncombe, or the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

**(5) Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the County of Buncombe shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

**(6) Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the County of Buncombe or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the County of Buncombe to enter into such litigation to protect the interests of the County of Buncombe, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX B TO TITLE VI ASSURANCE

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

### (GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the County of Buncombe will accept Title to the lands and maintain the project constructed thereon, in accordance with the North Carolina General Assembly, the Regulations for the Administration of its Community Transportation System, Mountain Mobility and the policies and procedures prescribed by Federal Transit Administration of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the County of Buncombe all the right, Title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

### (HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto County of Buncombe and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the County of Buncombe, its successors and assigns.

The County of Buncombe, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on over or under such lands hereby conveyed [,] [and]\* (2) that the County of Buncombe shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended [,] and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to reenter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.\*

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

### APPENDIX C TO TITLE VI ASSURANCE

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the County of Buncombe pursuant to the provisions of Assurance 7(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, County of Buncombe shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (licenses, lease, permit, etc.) had never been made or issued.

(Include in deed.)\*

That in the event of breach of any of the above nondiscrimination covenants, County of Buncombe shall have the right to reenter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of County of Buncombe and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by County of Buncombe pursuant to the provisions of Assurance 7(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or he otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of, race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary. Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964), and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, County of Buncombe shall have the right to terminate the (license, lease, permit, etc.) and to reenter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, County of Buncombe shall have the right to reenter said land and facilities there-on, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of County of Buncombe and its assigns.