United States Department of the Interior
National Park Service

National Register of Historic Places
Registration Form

This form is for use in nominating or requesting determinations for individual properties and districts. See instructions in How to Complete the National Register of Historic Places Registration Form (National Register Bulletin 15A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of Property

historic name: Ashe, Governor Samuel, Grave

2. Location

street & number: East end of farm lane extending from South side of N/A not for publication

city or town: Rocky Point

state: North Carolina code: NC county: Pender code: 141 zip code: 28457

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act, as amended, I hereby certify that this \[ \checkmark \] nomination \[ \checkmark \] request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property \[ \checkmark \] meets \[ \checkmark \] does not meet the National Register criteria. I recommend that this property be considered significant nationally \[ \checkmark \] statewide \[ \checkmark \] locally. \[ \checkmark \] See continuation sheet for additional comments.

[Signature]
[Title]

State of Federal agency and bureau

In my opinion, the property \[ \checkmark \] meets \[ \checkmark \] does not meet the National Register criteria. \[ \checkmark \] See continuation sheet for additional comments.

[Signature]
[Title]

State or Federal agency and bureau

4. National Park Service Certification

I hereby certify that the property is:

- \[ \checkmark \] entered in the National Register. See continuation sheet.
- \[ \checkmark \] determined eligible for the National Register. See continuation sheet.
- \[ \checkmark \] determined not eligible for the National Register.
- \[ \checkmark \] removed from the National Register.
- \[ \checkmark \] other, (explain:)

[Signature of the Keeper]

Date of Action:

_________
Ashe, Governor Samuel, Grave

5. Classification

Ownership of Property

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Name of related multiple property listing

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6. Function or Use

Historic Functions

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Current Functions

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7. Description

Architectural Classification

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Materials

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<th>Other</th>
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Narrative Description

| Describe the historic and current condition of the property on one or more continuation sheets. |
Ashe, Governor Samuel
Grave
Name of Property

Pender County, N. C.
County and State

8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property
for National Register listing.)

- [ ] A Property is associated with events that have made
  a significant contribution to the broad patterns of
  our history.

- [X] B Property is associated with the lives of persons
  significant in our past.

- [ ] C Property embodies the distinctive characteristics
  of a type, period, or method of construction or
  represents the work of a master, or possesses
  high artistic values, or represents a significant and
  distinguishable entity whose components lack
  individual distinction.

- [ ] D Property has yielded, or is likely to yield,
  information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

Property is:

- [ ] A owned by a religious institution or used for
  religious purposes.

- [ ] B removed from its original location.

- [X] C a birthplace or grave.

- [ ] D a cemetery.

- [ ] E a reconstructed building, object, or structure.

- [ ] F a commemorative property.

- [ ] G less than 50 years of age or achieved significance
  within the past 50 years.

9. Major Bibliographical References

Bibliography
(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):
- [ ] preliminary determination of individual listing (36 CFR 67) has been requested
- [ ] previously listed in the National Register
- [ ] previously determined eligible by the National Register
- [ ] designated a National Historic Landmark
- [ ] recorded by Historic American Buildings Survey
  Record #
- [ ] recorded by Historic American Engineering
  Record #

Areas of Significance
(Enter categories from instructions)

Politics/Government

Law

Period of Significance
1813

Significant Dates

Significant Person
(Complete if Criterion B is marked above)

Ashe, Governor Samuel

Cultural Affiliation

N/A

Architect/Builder

N/A

Narrative Statement of Significance
(Explain the significance of the property on one or more continuation sheets.)

Primary location of additional data:
- [X] State Historic Preservation Office
- [ ] Other State agency
- [ ] Federal agency
- [ ] Local government
- [ ] University
- [ ] Other

Name of repository:
Ashe, Governor Samuel, Grave  
Name of Property  
Pender County, N. C.  
County and State  

10. Geographical Data  

Acreage of Property  less than 1  

UTM References  
(Place additional UTM references on a continuation sheet.)  

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</table>

Verbal Boundary Description  
(Describe the boundaries of the property on a continuation sheet.)  

Boundary Justification  
(Explain why the boundaries were selected on a continuation sheet.)  

11. Form Prepared By  

name/title William B. Little; Claudia R. Brown  

organization N. C. State Historic Preservation  
date July 2001  

Office  

street & number 2908 Fairview Rd.; 4618 Mail Service Center  

telephone 919/782-1636; 919/733-6545  

city or town Raleigh; state N. C.; zip code 27608; 27699-4618  

Additional Documentation  
Submit the following items with the completed form:  

Continuation Sheets  
Maps  

A USGS map (7.5 or 15 minute series) indicating the property's location.  

A Sketch map for historic districts and properties having large acreage or numerous resources.  

Photographs  

Representative black and white photographs of the property.  

Additional items  
(Check with the SHPO or FPO for any additional items)  

Property Owner  
(Complete this item at the request of SHPO or FPO.)  

name Mrs. Mary Alice (Frank P.) Ward  

street & number 1005 Riverside Blvd.  

telephone 910/739-5651  

city or town Lumberton  

state N. C.; zip code 28358  

Paperwork Reduction Act Statement: This information is being collected for applications to the National Register of Historic Places to nominate properties for listing or determine eligibility for listing, to list properties, and to amend existing listings. Response to this request is required to obtain a benefit in accordance with the National Historic Preservation Act, as amended (16 U.S.C. 470 et seq.).  

Estimated Burden Statement: Public reporting burden for this form is estimated to average 18.1 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the Chief, Administrative Services Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; and the Office of Management and Budget, Paperwork Reductions Projects (1024-0018), Washington, DC 20503.
DESCRIPTION

The grave of Governor Samuel Ashe (1725-1813) is located near the center of the Ashe family cemetery, close to the east bank of the Northeast Cape Fear River in southeastern Pender County. Even in such a rural county, the cemetery is remarkable for its remoteness, situated at the end of a barely discernable dirt farm lane, approximately one mile from the nearest paved road. The nearest community is the village of Rocky Point, about five miles to the southwest. Not a single structure is visible from the cemetery. To the east, heavily wooded land drops off sharply as it descends to a swamp and the river beyond, while to the west vast cultivated fields edged in woods front the cemetery.

The cemetery is approximately eighty feet wide and ninety feet deep, defined by a new metallic chain link fence approximately three feet high with a pair of double gates somewhat north of center on the west side (see sketch map and key, exhibits A and B). The fairly level site is planted in mowed grass that extends a short distance beyond the fence. Within the cemetery, a few scattered, mature shrubs are planted close to the fence. Just beyond the fence there are a few scraggily hardwoods to the north and east, while slightly southwest of the cemetery's center there is a tall but thin magnolia. The only other foliage of note are the tall evergreen shrubs marking each of the four corners of the iron fence surrounding the only table tomb in the cemetery and, a short distance north of the tomb's northeast corner, a dying dogwood.

The marked graves in the cemetery are clustered in the central area, extending to the north. Only six of the markers appear to be contemporary with the burials: four traditional upright slab markers (each with a footstone) for members of the Shaw and McIntire families who died in the late nineteenth century, an 1880s obelisk marking the graves of Elizabeth and Owen Holmes, and the 1840s table tomb of Elizabeth and Ezekial Lane. The remaining markers, all rectangular granite slabs laid flat on the ground with the exception of a single rusticated upright slab, commemorate members of the Ashe family and are replacements that appear to date from the 1960s or later. Ten of these mark the graves of Governor Ashe, his two wives, two of the governor's sons, and a number of their wives and descendants. Four slabs in a row near the southeast corner of the cemetery, one northwest of Governor Ashe's grave, and another to the northeast are memorials to Governor Ashe's parents and numerous descendants. The rusticated upright slab is a memorial to Governor Ashe, his son Samuel, and Samuel's son William. The cemetery may contain other, unmarked graves, but they have not been identified.

Aside from the table tomb, the cemetery's largest single marker, slightly over three feet wide and seven feet long, identifies Governor Samuel Ashe's grave. Bearing a smooth finish and a lengthy inscription on top and rustication on the sides, this slab was installed in 1967 by Ashe descendants after the original slab marker had deteriorated beyond recognition. At the same time,
most if not all of the other Ashe family markers also were replaced. The Ashe family crest decorates the top of the marker, above the following inscription:

**SAMUEL ASHE**

**OF**

**BATH, NORTH CAROLINA**

1725 - 1813

A LEADER IN PREPARING

PLANS FOR THE REVOLUTIONARY WAR

AND FRAMING THE CONSTITUTION OF NORTH CAROLINA

APPOINTED JUSTICE 1779-1795

AND GOVERNOR OF NORTH CAROLINA 1795 - 1798

SON OF

JOHN BAPTISTA ASHE OF

BATH COUNTY

BORN C. A. 1695 -- DIED 1734

AND WIFE ELIZABETH SWANN

BOTH BURIED ON BELLAMY ESTATE

LOWER CAPE FEAR RIVER

GRANDSON OF

JOHN ASH (ASHE) "THE AGENT"

OF CHARLESTON, S. C.

BORN C. A. 1655 -- DIED IN ENGLAND

AND WIFE MARY BATT BURIED IN CHARLESTON, S. C.
STATEMENT OF SIGNIFICANCE

Summary

As the burial place of a historical figure of outstanding importance, the gravesite of Governor Samuel Ashe (1725-1813) is eligible for listing in the National Register of Historic Places under Criterion B in the areas of law and politics/government. Samuel Ashe had an illustrious career as one of the most highly respected lawyers in North Carolina. After gaining prominence as a leader of resistance against British rule, in April 1777 Ashe was elected as speaker of the first North Carolina senate and in December of that year the legislature appointed him presiding judge of the first state court, a position he held until 1795. In 1787, he handed down the Bayard vs. Singleton decision, which, for the first time in the United States, declared an act of a state legislature unconstitutional. This decision set the precedent for the United States Supreme Court's Marbury vs. Madison decision of 1803, the more famous federal equivalent of the 1786 ruling. In 1795, at the age of seventy, Ashe was elected the seventh governor of North Carolina. His three successive one-year terms were highlighted by the enactment of laws that improved judicial practices and by successfully thwarting a plot to destroy evidence of land fraud by state officials. Also in 1795, Ashe became president of the founding University of North Carolina board of trustees. He retired from public service in 1798 and died at his plantation, The Neck, in 1813.

Samuel Ashe's grave is in the Ashe family cemetery on the former plantation in southeastern Pender County. It is situated at the edge of a large cultivated field from which no buildings can be seen, overlooking wooded, swampy land to the north and east that drops off to the Northeast Cape Fear River. The Samuel Ashe Grave is near the center of the level, grassy cemetery, where it is surrounded by twenty-two grave and memorial markers for members of the extended Ashe family. After the original stone marker for Governor Ashe's grave deteriorated beyond repair, his descendants replaced it in 1967 with the current eight-foot by four-foot granite slab. The grave meets Criteria Consideration C because there has been no other appropriate site or existing building directly associated with Governor Ashe's productive life since his plantation house located 200 yards south of the cemetery, burned in the late 1800s.

Historical Background and Contexts

Samuel Ashe, born near Bath, North Carolina, in 1725, was the youngest child of Elizabeth Swann and John Baptista Ashe. The elder Ashe had moved to Bath from Charleston, South Carolina, circa 1718, to work for the port of Bath. Elizabeth Swann Ashe was a member of a prominent Bath family. John B. Ashe became a member of the lower house of the assembly from Beaufort precinct in 1723. Two years later, at about the time he became lower house speaker, he moved his family to the lower Cape Fear region. Shortly thereafter he built Sloop Point on
Topsail Sound in what is now Pender County. John B. Ashe became a member of the council upon the appointment of George Burrington as the colony's first royal governor in February 1731 and over the next year and a half held a succession of offices. By mid-1732, however, John B. Ashe was at odds with the governor, who had become a controversial figure due to his violent behavior. Ashe died in 1734 at Grovely, his plantation in present-day Brunswick County.

Samuel Swann, brother of Elizabeth Ashe, who had predeceased her husband, became guardian of the Ashe children, Mary, John, and Samuel. Swann enjoyed an active life of public service as a member of the lower house of the assembly from 1725 to 1762. In accordance with provisions of his brother-in-law's will, Swann ensured that Samuel and his brother were well educated. Samuel Ashe studied law, and thereafter returned to the lower Cape Fear area as assistant attorney for the Crown in the Wilmington district.

It has been proposed that Swann's strong support of popular sovereignty may have influenced his nephew Samuel's republican leanings, for Ashe became one of the first prominent citizens of the colony to support resistance to the British rule, despite his close British alliances. In the summer of 1774, after Governor Josiah Martin refused to convene the legislature, Ashe was one of the Committee of Eight that met in Wilmington, on July 21, 1774, to prepare an address to the people of North Carolina to call for a revolutionary convention for the following month. The next January Ashe was chosen as a member New Hanover County's committee of safety, which had the responsibility of explaining to the public the reasons for the revolutionary movement, and later in 1775 he became a member of the provincial congress. As president of the thirteen-member council of safety charged with carrying out the functions of government during the revolutionary period, in 1776 Ashe served on the twenty-four-member committee to draft the North Carolina Constitution.

As soon as the constitution was adopted, Governor Richard Caswell appointed Ashe as judge to hold the new State of North Carolina's first superior court, later the state supreme court. In April 1777, the first legislature elected Ashe speaker of the senate and in November of that year made

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3 C.F.W. Coker, typescript of remarks delivered at April 16, 1967 rededication of the Ashe Cemetery, including a quotation of part of John B. Ashe's will, copy in Samuel Ashe Grave survey file at the Division of Archives and History, Raleigh, N. C.
4 Crabtree, p. 54.
5 Powell, p. 54.
him presiding judge of the three-member state court, a position he held for eighteen years, until he became governor in 1795.6

The hallmark of Ashe's distinguished tenure on the state bench was the decision handed down in 1787 in *Bayard vs. Singleton*, described by state historians Lefler and Newsome as "one of the most famous cases in the history of North Carolina jurisprudence."7 The plaintiff was Elizabeth Bayard who was seeking the recovery of property that had been willed to her by her father, Samuel Cornell of New Bern, but had been confiscated from Cornell by the state and sold to Singleton under the Confiscation Acts of 1777 and 1779. Cornell had been a wealthy merchant and landowner prominent in government affairs in the late colonial period, serving as a member of Tryon's council and, in 1774–1775, as chief justice. In 1775 Cornell left New Bern for a two-year stay in England. When he returned to North Carolina in 1777, he was briefly allowed into New Bern to settle his affairs. In anticipation that his thousands of acres would be confiscated, he deeded them to his wife and daughters while on board a ship in New Bern harbor. Soon thereafter, he left for England, where he died. His daughter Elizabeth was married to William Bayard II, a wealthy colonial merchant based in New York where the couple lived. Regardless of Cornell's 1777 deeds, his land was seized by the new government and eventually sold to Spyers Singleton, a New Bern merchant who had purchased Cornell's house and some of his land.

Singleton's lawyers moved to dismiss the case on the grounds that Cornell was a British subject, or an alien enemy, when he drew up the deeds conveying property to his daughter while on board a ship in New Bern harbor. Furthermore, the state legislature had enacted a law in 1785 ordering the state's judges to dismiss all "vexatious" lawsuits without a trial. Ashe and fellow judges Samuel Spencer and John Williams disagreed. In a letter to William R. Davie, James Iredell explained their reasoning: "Whatever the disabilities under which Cornell labored, such disabilities did not apply to the present plaintiffs, who, being citizens of one of the United States, were by the Articles of Union [Article 14 of the Bill of Rights], Citizens of this state."8

At the same time, however, the justices also ruled that aliens could not hold land in North Carolina and that alien enemies had no legal rights there. Ashe's strong prejudice against the Loyalists and British have been explained by his "early perilous activity in opposition to the British and the uncalled-for martyrdom of his brother, John Ashe, and his friend Cornelius Harnett, at their captors' hands."9 In the jury trial of Elizabeth Cornell Bayard's claim that ensued

6 Ibid.


9 Ibid.

10 Ibid.
in November 1787, the jury decided that Samuel Cornell was always a British subject. Cornell was an alien enemy when he drew up the deeds on board the British ship and he had returned to England at the time his land was confiscated. Thus he and those claiming through him were precluded from enjoying the protections of the state constitution. The trial ended in a verdict for Singleton, and numerous other similar cases were dropped from the court docket.\(^\text{10}\)

Lefler and Newsome describe the reaction to the state court's decision as follows:

> There was much public criticism of the court's decision, and some lawyers were determined "to write the judges off the bench." The General Assembly authorized "an enquiry into the present state of the administration of Justice in the Superior Courts," and there was talk of impeachment of the judges. But instead of taking such drastic action, the legislature upheld their decision and voted thanks "for their long and faithful service."\(^\text{11}\)

\textit{Bayard vs. Singleton} is important as one of the first instances (if not \textit{the} first) under a written constitution of a legislative act being declared unconstitutional. This assertion of the right of judicial review of state law is widely believed to have set the precedent for the federal equivalent, Chief Justice John Marshall's 1803 decision in \textit{Marbury vs. Madison}. The fact that Alfred Moore, the North Carolina attorney general who argued against Mrs. Bayard during the \textit{Bayard vs. Singleton} trial, served on the United States Supreme Court with Chief Justice Marshall at the time of the decision supports the presumption that \textit{Bayard vs. Singleton} was known to Marshall and the other justices. Following \textit{Marbury vs. Madison}, the right of judicial review of state law came to be considered a basic principle of American law.

In 1795, at the age of seventy, Samuel Ashe was elected to the first of three consecutive one-year terms as governor of North Carolina. Ashe had begun his career as a Federalist, but by the 1790s he was a Jeffersonian who steadfastly supported states' rights. Historian Beth Crabtree, in \textit{North Carolina Governors, 1585-1975}, presents the following summary of Ashe's three years as governor:

> While he was governor, and through his influence, court practice was improved by the enactment of laws regulating the method of procedure for grand juries and restrictions in other legal matters. A disturbing incident occurred during his administration. Fraud in the sale of public lands, committed by highly respected state officials, was detected by the governor. The fraud was committed by officers issuing grants for a certain number of acres and then when the surveys were made, the number was greatly increased.

\(^{10}\) \textit{Ibid.}; and Lefler and Newsome, p. 258.
\(^{11}\) Lefler and Newsome, p. 258.
At the time of the trial records of the sales were placed in the comptroller’s office, located in the Capitol, for safekeeping. Informed of a plot to carry off the books and burn the State House, Ashe acted promptly to thwart the deed. James Glasgow, twenty years secretary of state, was accused of originating the scheme and finally was tried and convicted.\(^\text{12}\)

Ashe maintained a lifelong interest in education. In 1795, the same year he began his first term as governor, Ashe became president of the board of trustees that oversaw the formal opening of the University of North Carolina, the first state-supported university in the country. He also served on the board of Innes Academy in Wilmington.

Ashe spent much of his adult life at The Neck, his plantation on the Northeast Cape Fear River in eastern Pender County, near the community of Rocky Point. He was married twice, both times to cousins: first, to Mary Porter, with whom he had three sons, and after her death to a widow, Elizabeth Jones Merrick, with whom he had several children. Samuel Ashe died in 1813 at the age of eighty-seven and was buried in the family cemetery at The Neck. Subsequently, Asheville, Asheboro, and Ashe County were named in his honor.\(^\text{13}\) By the mid-twentieth century, the original stone that had marked his grave had completely deteriorated, and in 1967 the grave received a new slab marker as part of a restoration of the Ashe family cemetery sponsored by the Pender County Historical Society. Now that all other aboveground traces of The Neck have been lost, Samuel Ashe’s well-tended grave in the Ashe family cemetery on the former plantation remains the only identifiable resource directly associated with the noted politician, jurist, and statesman.

\(^{12}\) Crabtree, pp. 54-55.

\(^{13}\) Powell, p. 54.
BIBLIOGRAPHY

Coker, C. F. W. Typescript of remarks delivered 16 April 1967 at Ashe Cemetery rededication. Copy in survey file at Division of Archives and History, Raleigh, N. C.


VERBAL BOUNDARY DESCRIPTION

The boundaries of the grave of Governor Samuel Ashe encompass that area covered by the granite slab marker, slightly more than three feet wide and seven feet long, near the middle of the Ashe family cemetery. The cemetery is that parcel as shown in print on the accompanying U.S.G.S. map, and the slab is approximately forty feet east and slightly north of the cemetery gates.

VERBAL BOUNDARY JUSTIFICATION

The boundary encompasses all of the property historically and currently consisting of the grave of Governor Samuel Ashe.
KEY TO CEMETERY MARKERS

* Samuel Ashe, 1725-1813

A. Maj. William Shepperd Ashe
   Son of Col. Samuel Ashe and Elizabeth Shepperd Ashe
   8/12/1813 - 9/14/1862

B. Sarah Ann Green
   Wife of Wm. S. Ashe
   1/6/1816 - 7/8/1863

C. Anne Eliza Ashe
   Wife of Dr. James A. Miller
   1831-1868
   (daughter of Wm. S. Ashe)

D. In memory of Mary Porter Ashe
   Daughter of Wm. S. Ashe
   11/12/41 - 6/1/65
   buried in Fayetteville

E. Obelisk (remains of a larger monument)
   East side:
   Elizabeth Holmes (wife of Owen)
   d. 6/1888, age 35
   West side:
   Owen Holmes
   d. 6/6/1870, age 44

F. Elizabeth Jones Merrick
   second wife of Gov. Ashe
   1735-1815

G. Mary Porter
   first wife of Gov. Ashe
   1732-1767

H. Thomas Jones Ashe
   son of Gov. Ashe
   1770-1795

I. Col. Samuel Ashe
   second youngest son of Gov. Ashe
   1763-1835

J. Elizabeth Shepperd
   wife of Col. Samuel Ashe
   1772-1854

K. William Cincinnatus Ashe, 1765-1781
   son of Gov. Ashe
   Lt. of Marines, Lost at Sea

L. Thomas Henry Ashe, 1815-1859
   son of Col. Samuel Ashe

M. Table Tomb:
   Elizabeth Lane, d. 1846, age 70
   Ezekial Lane, d. 1845, age 61

N-Q. Shaws and McIntires

R-U. markers for people buried elsewhere:
   R. in memory of Gov. Ashe's parents
   S. John Baptista Ashe (Gov.'s son)
   T. J. B. Ashe's wife
   U. Gov.'s grandson, son of Col. Samuel Ashe

Ashe Marker: Memorial to Gov. Samuel Ashe
   (1725-1813), Col. Samuel Ashe (1763-1836),
   and William S. Ashe 1813-1862
United States Department of the Interior
National Park Service

NATIONAL REGISTER OF HISTORIC PLACES
CONTINUATION SHEET

Section Exhibit A Page 9

Ashe, Governor Samuel, Grave
Pender County, N. C.

Map drawn approximately to scale

[Diagram of the grave site with annotations and measurements]