

# **S T A T E M E N T**

SUBJECT: Approved Disability Claim Vietnam era—exposure to tactical herbicides in Thailand

## **THE FINDINGS.**

**\* \* \* EXTRACT \* \* \***

### **DEPARTMENT OF VETERANS AFFAIRS**

**Veterans Benefits Administration**

**[Togus] Regional Office**

**[1 VA Center]**

**[Augusta, ME 04330-6795]**

**NELSON BAUM [MI not shown]**

**VA FILE NUMBER**

**[number purposefully omitted]**

**Represented By:**

**MAINE DEPARTMENT OF VETERANS['] SERVICES**

**Decision Review Officer Decision**

**09/07/2016**

## **INTRODUCTION**

The records reflect that you are a veteran of the Korean Conflict Era, Peacetime and Vietnam Era. You served in the Air Force from July 21, 1954 to June 30, 1976. We received a Notice of Disagreement from you on November 5, 2015 about one or more of our earlier decisions. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

## **DECISION**

1. Entitlement to an earlier effective date for service connection of posttraumatic stress disorder (previously evaluated as other specific trauma and stressor related disorder) is granted because a clear and unmistakable error was made; therefore, a 10 percent evaluation is assigned effective January 31, 2014. The 50 percent evaluation was assigned from November 26, 2014.
2. Service connection for coronary artery disease (claimed as heart condition) associated with herbicide exposure is granted with a 60 percent evaluation effective January 31, 2013. This decision resolves this issue under appeal fully in your favor.
3. Service connection for residuals of cancer of the larynx(claimed as pharyngeal cancer, dysphagia) associated with herbicide exposure is granted with a 10 percent evaluation effective November 26, 2014. This decision resolves this issue under appeal fully in your favor."

**\* \* \* \* \***



## REMARKS BY CLAIMANT.

The chemical *dioxin* is contained in Agent Orange and Tactical Herbicides. It is this chemical that causes diseases which maims and kills. The Department of Veterans Affairs (VA) recognizes the term *Tactical Herbicides* for the chemicals used on the perimeters of the air bases in Thailand. Part of VA Compensation & Pension Service Bulletin, May 2010, is quoted:

**“Herbicide related claims from Veterans with Thailand Service ...** After reviewing documents related to herbicide use in Vietnam and Thailand, C&P Services has determined that there was significant use of herbicides on the fenced in perimeters of military bases in Thailand intended to eliminate vegetation and ground cover for base security purposes. Evidence of this can be found in a declassified Vietnam era Department of Defense (DoD) document titled *Project CHECO Southeast Asia Report: Base Defense in Thailand*. [The declassification date was September 22, 1999, and the date of the VA C&P Bulletin is May 2010, 10½ years later.] ...

“DoD has provided information that commercial herbicides, rather than tactical herbicides, were used within the confines of Thailand bases to control weeds. ... there is some evidence [indicates] that the herbicides used on Thailand base perimeters may have been ... of much greater strength and with characteristics of tactical herbicides. ... If a US Air Force Veteran served on one of these air bases as a security policeman, ... or otherwise served near the air base perimeter, as shown ... on performance evaluation, or other credible evidence, then herbicide exposure should be acknowledged on a fact found or direct basis. ... However, this applies only during the Vietnam era, from February 28, 1961 to May 7, 1975.”

***It's complicated.*** An Air Force Retiree and Combat Veteran becomes ill and is disabled with a disease listed on the Agent Orange disease list (38 CFR §3.309(c)). And so a Disability Claim is filed with the VA. They check the Veteran's records and determine the Veteran was assigned to the 7th ACCS at Udorn RTAFB, Thailand, during the Vietnam era. They also discover that tactical herbicides were used on the perimeter fence line at Udorn. However, after further review of the records, the VA's question might logically be, “How do you get exposed to tactical herbicides sprayed on the perimeter fence when you are flying at 24,000 to 36,000 feet on a combat mission?”

My claim presented credible evidence showing that the enlisted flyers assigned to the 7th ACCS—while this squadron was operational at Udorn RTAFB, Thailand—spent nearly a year (10½ months minimum) residing in a barracks less than 20 meters from the perimeter fence which the Department of Defense has acknowledged was sprayed with tactical herbicide chemicals of a much greater strength than commercial herbicides and/or Agent Orange chemicals also used on the air bases. The Department of Veterans Affairs has acknowledged my claims for service connection for coronary artery disease (claimed as heart condition), and residuals of cancer of the larynx (claimed as pharyngeal cancer, dysphagia), associated with herbicide exposure, effective January 31, 2013, and November 26, 2014, respectfully. This decision was based on credible evidence and acknowledged on a fact found or direct basis. It is believed this decision sets a precedent. This decision can now be cited in support of any disability claim submission relating to herbicide exposure in Thailand during the Vietnam era by enlisted members of the 7th ACCS specifically, and others under similar circumstances.

As for me—the claimant—I have never been in Vietnam, but I am a Vietnam Veteran. The combat missions I crewed on was with two special operations units flying missions out of air bases located in Thailand during the Vietnam era. I have never been exposed to, nor do I claim to have been exposed to, Agent Orange, but I suffer from diseases on the Agent Orange disease list (38 CFR §3.309(c)) because of exposure to tactical herbicides used on the perimeter fences of air bases in Thailand.

While in the Air Force and serving in Thailand (1971 and again in 1973), my control and duty AFSC was A29372A, Airborne Radio Operator, Duty Position on Form 5: RO. In October 1970, I was reassigned to the 7th Airborne Command and Control Sq (7th ACCS), APO San Francisco 96237, located



at Udorn Royal Thai Air Force Base, Thailand. While en route, I attended Jungle Survival Training (Snake School) in the Philippines—completion date 14 January 1971. I arrived at Udorn 3 days later.

Enlisted flyers assigned to the 7th ACCS were housed on the ground floor of a large 3-story metal building (see attached photograph 1). My assignment was with Cricket Orbit. Hillsboro and Cricket were the “day flyers” residing on one end of the building. Moonbeam and Alleycat were the “night flyers,” occupying the other end. My first mission was on January 21, 1971, and my last mission was on December 2, 1971, aboard EC-130E 62-1857. My assignment with the 7th ACCS was for one year (365 days), but I was permitted an early port call because of the high number of ROs assigned the 7th ACCS in the winter of 1971. Counting my time for snake school, a 14 day mid-tour leave, and the early port call just before Christmas 1971, it is estimated I spent 330 nights—out of the 365 day assignment—sleeping in the barracks. **This 330 nights is an important fact on the VA claim.**

In 1971, the barracks was less than 20 meters from the perimeter fence. It is estimated the distance from the barracks to the perimeter fence to be 20 feet, the width of the perimeter road to be approximately 20 to 24 feet, and the distance from the road to the perimeter fence to be approximately 8 to 12 feet. Expressed in meters, the distance from the barracks to the perimeter fence 14.25 to 17.75 meters (see attached photograph 3). **This distance is an important fact on the VA claim.**

The ground floor of the barracks used by the 7th ACCS was divided into twelve separate cubicles—mine housed 11 men. Each of these cubicles had a “mama-san” whose duty also included washing all the men’s laundry. The perimeter fence was often used by the mama-sans as a clothesline for drying the laundry (see attached photograph 2). **This is an important fact on the VA claim.**

In January 1973, I was placed on TDY from the 3rd ACCS, Grissom AFB, IN, for 150 days in support of the Vietnam era conflict. The itinerary on the orders reads: TO: Barksdale AFB LA, APO San Francisco 96239, variation in itinerary authorized. The APO is Kadena AB, Okinawa, but the actual duty station was U-Tapao Royal Thai Naval Air Field, Thailand. There I was a crew member on modified KC-135A aircraft flying off the coast of North Vietnam, as part of Operation Combat Lightning, call sign WAGER.

Several months before my retirement from the Air Force, in 1976, I passed my annual flight physical—my health was considered to be excellent. I am tall and have always been thin of stature and considered an active person. I have no family history of cardiac problems.

In 1981, I was diagnosed with—what was believe to be—Horner’s Syndrome. The problems of this disease has persisted for 35 years. This disease has very bad effects. No doctor has ever been able to say why I have this disease or what should be done about it.

In 1982, and again in 1993, I suffered severe heart attacks. As a result of the one in 1993, which also required open heart surgery, Social Security granted me 100 percent disability. In 2004, I had one stint implanted, and again in 2016, I had two more implanted. This heart condition is called Ischemic Heart Disease (IHD) and is listed on the Agent Orange disease list (38 CFR §3.309(c)).

In 2005, I was diagnosed with laryngeal cancer and spent 41 days in hospital. Treatment included 37 rounds of radiation and 2 of chemo. The radiation treatment caused my throat to become swollen and my throat and mouth to become somewhat raw. Mt throat basically closed up. I was unable to swallow and for 22 months I lived with a feeding tube in my stomach through the abdominal wall. There were severe complications with the treatment which including three major abdominal surgeries—two were 911 type emergencies. Despite follow-up treatment, I still have difficulty swallowing and speaking loudly enough to be heard by many people. This form of cancer is one of several cancers listed under respiratory cancers on the Agent Orange disease list (38 CFR §3.309(c)).

My first contact with the VA was at the VA Togus Hospital, Augusta, Maine, in 1982. This followed my first heart attack. I was informed—by a doctor—that I was an Air Force retiree and not a Veteran. He told me leave and not come back, the Air Force would take care of me. I believe this was due to the way funding for the VA was appropriated by Congress. I didn’t understand all of this at the time, but this incident left a negative effect on me and I had nothing more to do with the VA until 2014.



In 2014, I was diagnosed as suffering from PTSD based on my military experiences. I ultimately sought help from the VA. This was on advice from both my primary care physician (a non-VA physician) and a psychiatrist at the Mental Health Facility, Maine Medical Center, Portland, Maine (a non-VA physician). Since then, I have been seeing a counselor at the Vet Center on Stevens Avenue in Portland for an hour a week. This counseling has probably saved my life. However, in 2014, when I contacted the VA, I knew nothing about how the VA operated—their requirement to file a claim in order to receive any benefit entitlements and the need to secure assistance from an advocate to ensure all “i’s” are dotted and “t’s” are crossed. I knew little about the use of Agent Orange in Vietnam, and nothing about the use of tactical herbicides in Thailand. I definitely did not know what exposure to these chemicals could do to the human body. I was an Air Force Sergeant (Retired)—that’s what the VA had told me—but I knew I needed help. My body and my mind were sick.

On January 31, 2014, I appointed the Department of Defense, Veterans and Emergency Management, Maine Veterans’ Services as my advocate. It seems my filing a disability claim with the VA automatically made the relationship adversarial. During the time from January 31, 2014 to June 30, 2014, all the necessary VA forms believed required in support of my claim were filed and the examination requirements at VA facilities were met. Note: Each disability claim with the VA is unique unto itself—nothing is cut and dried. On June 30, 2014, a letter from the Department of Veterans Affairs, stated:

“We made a decision on your claim ... We determined that the following condition was related to your military service, ... Other specific trauma and stressor related disorder (claimed as posttraumatic stress disorder) Percentage (%) Assigned 10% Effective Mar 11, 2014. ... the following condition was not related to your military service ... Heart condition.”

On November 25, 2014, an Application for Disability Compensation and Related Compensation Benefits, VA Form 21-526EZ, was filed with cover letter from the Maine Veterans’ Services, which stated:

“The veteran request a re-examination for an acquired psychiatric disorder to include, but not limited to PTSD and service connection for ischemic heart disease due to presumptive exposure to tactical herbicides while stationed at Udorn Royal Thailand AFB during the Vietnam [era] conflict; see 21-4138, photograph and 21-0960A-1. Finally, the veteran is claiming dysphagia as a residual condition from treatment of pharyngeal cancer (AO presumptive). Treatment began April 29, 2005, and dysphagia was first medically noted January 23, 2006; see attached medical records.”

As a result of the above action, I was given a second examination and on April 21, 2015, a letter from the Department of Veterans Affairs, stated:

“We made a decision regarding your entitlement to VA benefits. ... WHAT WE DECIDED ...

“Issue/Contention posttraumatic stress disorder (previously evaluated as other specific trauma and stressor related disorder) Old Percentage (%) Assigned 10% New Percentage (%) Assigned 50% Effective Nov 26, 2014 ...

“We have assigned a 50% evaluation for your other specific trauma and stressor related disorder (claimed as posttraumatic stress disorder) ...

“Issue/Contention heart condition Service connection is denied because the required service in Vietnam is not shown, nor is there evidence of exposure to herbicides during military service. ... [see References]

“Issue/Contention residuals of pharyngeal cancer, dysphagia Service connection is denied because the required service in Vietnam is not shown, nor is there evidence of exposure to herbicides during military service. ...“ [see References]

On November 3, 2015, a Notice of Disagreement, VA Form 21-0958, was filed with a cover letter from the Maine Veterans’ Services. It was also requested a Decision Review Officer (DRO) process to



handle my appeal. Cover letter, Subject: Notice of Disagreement, TO: Adjudication, stated:

"The veteran disagrees with the VA's decision to deny service connection for Ischemic Heart Disease and residuals of pharyngeal cancer; dysphagia, due to exposure to tactical and/or commercial herbicides and/or Agent Orange while stationed at Udorn RTAFB, Thailand 1971. ... Please note that the picture identifying the clothes on the perimeter fence was not directly in front of the veteran's barracks but is being submitted as evidence of the veteran's statement that this was a common occurrence at Udorn RTAFB."

All request by the VA were met in the time between the filing of a Notice of Disagreement and September 30, 2016. On September 30, 2016, in a scheduled appointment with my advocate at the Portland Field Office, it was discovered that a decision had been reached on my Notice of Disagreement. A letter addressed to me, dated September 13, 2016, was in my VA file, but I had never received a copy. Coincidental to this appointment, in checking my bank account the morning of September 30, I found a larger amount—than was the normal—had been deposited by the VA. My advocate spoke with the Maine Veterans' Services in Augusta and they were able to download this letter and then fax a copy to my advocate in Portland. I consider this a "boot-leg" copy, not an official notification copy. Even today, December 15, 2016, I have yet to received an official copy.

## CONCLUSION.

My advice to any Veteran filing a disability claim is just be prepared. Get the services of an knowledgeable and committed advocate. Get involved yourself. Find out what **38 CFR** is and says. Go up on line and find out what other veterans had to do and didn't do in filing their claims. Learn something about the rules and use this knowledge to your advantage. Be patient, but don't get walked on.

As is noted by reliable news media sources and other creditable IT sources, a disability claim filed by a Veteran can—and sometimes does—take years to be resolved. Mine did. I also found that any back moneys due to a Veteran—that's the monthly amount due a Veteran from the date the claim was filed to date the claim is actually resolved—can also take additional months to be paid. As I understand things, a retired service member who receives a disability rating below 50 percent will have their monthly disability amount deducted from their monthly retirement payment. For awards over 50 percent, it gets complicated. You are probably not going to receive a retirement check and a disability check at the same time. There is a formula someplace that says how much you'll get.

The VA letter with my disability award—the one I have not officially received yet—says that we (the VA) have withheld benefits and must do this to prevent a double payment. This means the VA won't give a disable Veteran the back pay due until DoD (DFAS) audits the claimant retirement pay account from the date the claim was filed to determine how much back money the claimant will actually be paid. There is also a formula someplace for this too. Also, DoD pays the moneys, not the VA, but it comes thru the VA and then to the Veteran. The real issues, as reflected in this Statement, are the time and the procedures required to reach a decision on a Veteran's disability claim. And what about to Veteran disability precluding gainful employment and the accumulation of medical bills?

## Attachments.

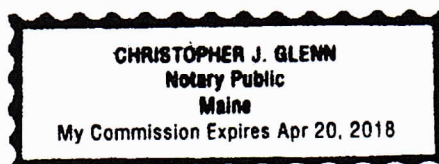
One page of references (page 6).

Three pages of photographs with captions (pages 7 thru 9).

*I, Nelson O. Baum, do affirm that I make this Statement without any reservations and that it presents the facts to the best of my knowledge and belief, so help me God.*

*Nelson O. Baum*

Nelson O. Baum



12/15/16 *[Signature]*



## REFERENCES.

- 1) Agent Orange—From Wikipedia, Pages 9, 10, and 19.

“In 1991, Congress enacted the Agent Orange Act, giving the Department of Veterans Affairs the authority to declare certain conditions ‘presumptive’ to exposure to Agent Orange/dioxin, making veterans who served in Vietnam eligible to receive treatment and compensation for these conditions. [“Agent Orange—Office of Public Health and Environmental Hazards” .va.gov. 2009-11-11.]. ... The same law required the National Academy of Sciences to periodically review the science on dioxin and herbicides used in Vietnam to inform the Secretary of Veterans Affairs about the strength of the scientific evidence showing association between exposure to Agent Orange/dioxin and certain conditions. [“PL 102-4 and The National Academy of Sciences”. nationalacademies.org. 1981-11-03.”]

“By April 1993, the Department of Veterans Affairs had compensated only 486 victims, although it had received disability claims from 39,419 soldiers who had been exposed to Agent Orange while serving in Vietnam. [Fleischer, Doris Zames; Zames, Freida (2001). *The disability rights movement: from charity to confrontation*. Temple University Press. p. 178. ISBN 978-1-56639-812-1.]

Vietnam-era Veterans whose service involved duty on or near the perimeters of military bases in Thailand anytime between February 28, 1961 and May 7, 1975 may have been exposed to herbicides and may qualify for VA benefits. A claim for direct exposure is possible if the individual can verify that they worked or lived in close proximity to the affected areas of the bases in Thailand. ...

“A declassified Department of Defense report written in 1973, suggests that there was significant use of herbicides on the fenced-in perimeters of military bases in Thailand to remove foliage that provided cover for enemy forces. [Project CHECO Southeast Asia Report: Base Defense in Thailand 1968—1972.]”

“In 2013 VA determined that herbicides used on the Thailand base perimeters may have been tactical and procured from Vietnam, or a strong, commercial type resembling tactical herbicides. [Thailand Military Bases and Agent Orange Exposure” .publichealth.va.gov/exposures/agentorange/thailand.asp.]”

- 2) CHECO Report, Base Defense in Thailand, 18 FEB 1973 (SECRET NOFORN), excerpt available on internet was declassified 22 SEP 1999 with some pages omitted. Part of a paragraph on page 67 is quoted:

“The U.S. Embassy’s ROE [Rules of Engagement] also provide several limitations on physical defenses. ... Soil sterilization and herbicide use was also approved in 1969, but these were subject to extensive coordination with local RTG [Royal Thai Government] authorities and final permission from the Embassy. They could only be used on areas within the perimeter ... 144”

- 3) VA Compensation Services Bulletin, December 2011, part of which is quoted:

**“Effective Date for Claims Involving Exposure to Agent Orange with Thailand Base Perimeter Duty** Compensation Service acknowledges exposure to tactical herbicides, such as Agent Orange, on a direct, occupational, or facts found basis for Veterans with duty on military base perimeters in Thailand during Vietnam era. As a result, these Veterans are eligible for presumptive service connection for diseases associated with tactical herbicide exposure listed at 38 CFR 3.309 (c).

“38 CFR 3.156 (c) states a denied claim may be reconsidered based on receipt of “service records that are related to a claimed in-service event, injury or disease.” ...

“The “service records” Compensation Service based their decision on included information from a declassified 1973 Department of Defense document titled *Project CHECO Southeast Asia Report: Base Defense in Thailand*. Within this 91-page report are several references to significant herbicide use on the fenced-in perimeters of Thailand airbases.”



PHOTO No. 1

**Enlisted Barracks — Udorn RTAFB, Thailand**

**NOTE**

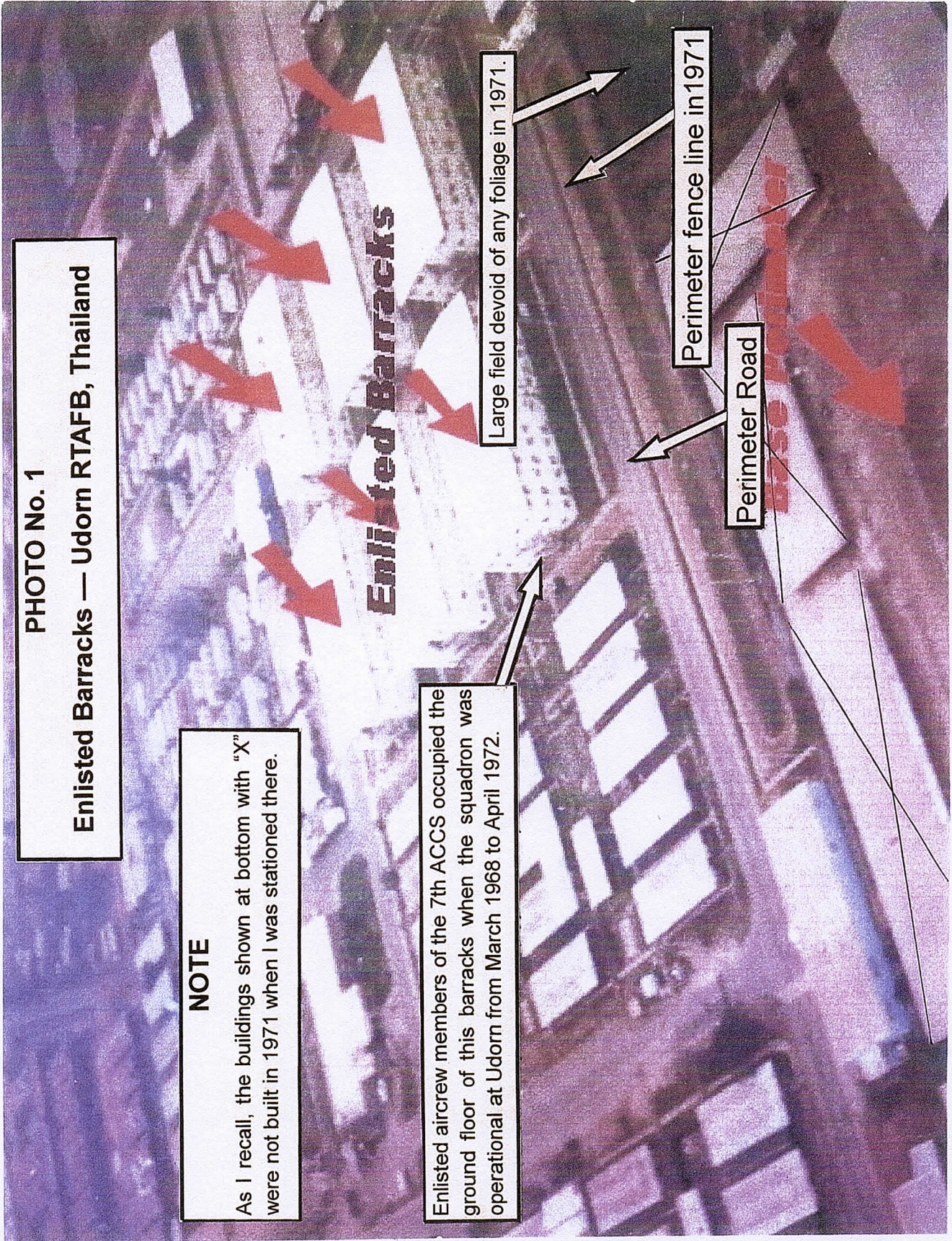
As I recall, the buildings shown at bottom with "X" were not built in 1971 when I was stationed there.

Enlisted aircrew members of the 7th ACCS occupied the ground floor of this barracks when the squadron was operational at Udorn from March 1968 to April 1972.

Large field devoid of any foliage in 1971.

Perimeter fence line in 1971

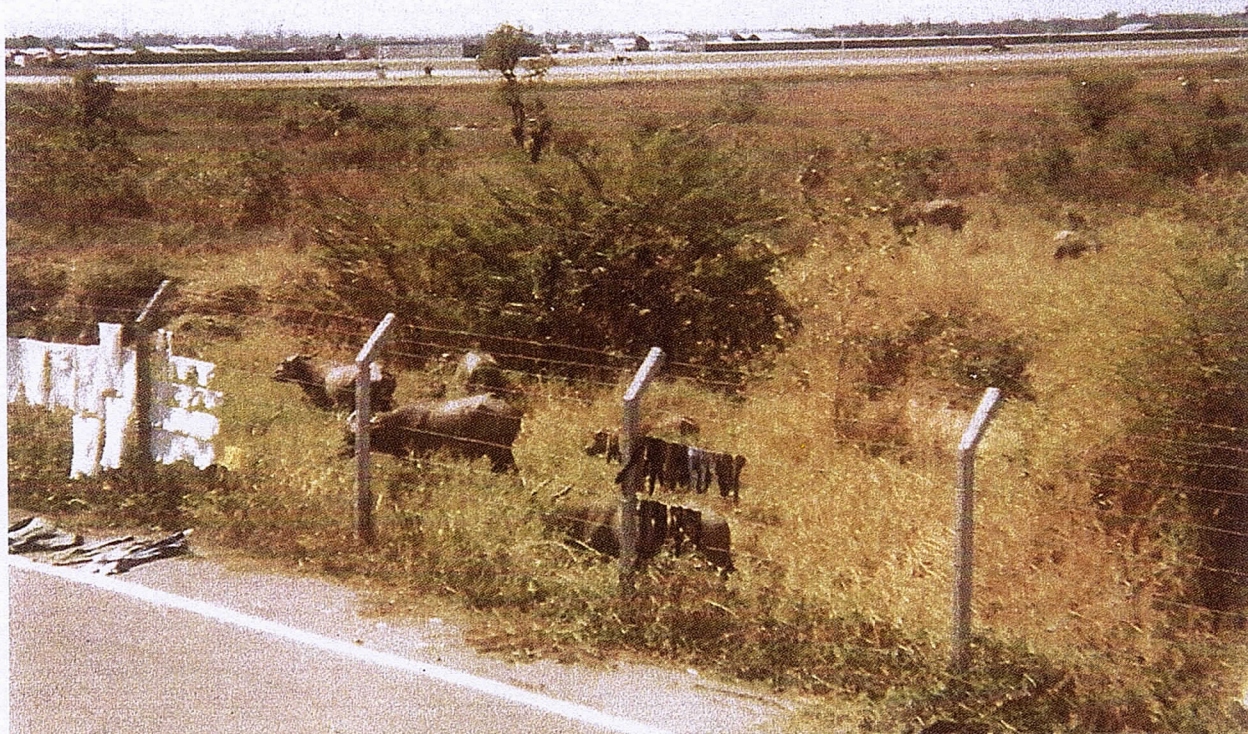
Perimeter Road





**PHOTO No. 2**

**Laundry drying on perimeter fence — Udorn RTAFB, Thailand**



**NOTE**

Enlisted aircrew members assigned to the 7th ACCS resided on the ground floor of a large three story barracks. The barracks was divided into cubes with each housing 11 men. Each cube was assigned a mama-san for services which included, keeping the cube clean, keeping the latrines clean, making the beds, exchanging of linen on "linen-day," shining shoes, and doing each man's laundry. The rule was that each enlisted man would pay the mama-san \$5.00 each month for services rendered. Each man's dirty clothes were washed outside the barracks on a large concrete-slab using detergent, scrub brush, a stick, and base water via a garden hose. The custom was that the clothes were dried on a line—space available—spread out on the grass, or often they were hung on the perimeter fence just across the perimeter road from the barracks. Later, when the fence-line and the grassy area around the barracks had been sprayed with tactical herbicides/dioxin, clothes were still dried in the same manner as before. This clothes washing and clothes drying took place on the fence within 30 meters from the perimeter fence-line referenced above. It should be noted that the US Army Field Manual 3-3, Tactical Employment of Herbicides, December 1971, guidelines in maintaining minimum buffer when spraying was 500 meters. This distance was for eatable vegetation in 1971. However, in 1971, little was acknowledged about the chemical dioxin contained in herbicides and its affect on human tissue.



**PHOTO No. 3**  
**Enlisted Barracks — Udorn RTAFB, Thailand**

**NOTE**

Barracks on right, bottom floor not shown, was occupied by enlisted aircrew members of 7th ACCS.

The jeep on the perimeter road gives some relationship in distance between barracks and the fence line which was sprayed with tactical herbicide chemicals.

Note lack of vegetation outside of barracks.

Large field devoid of any foliage in 1971.

Perimeter fence line in 1971

Perimeter Road