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LAND TALKING PAPER

I. SUMMARY OF DISCUSSIONS TO DATE:

During Marianas IV and the subsequent working sessions of the Joint Land Committee the full range of issues, as well as all land related concerns voiced by the MPSC have been addressed. Although the United States has stated a detailed price and method of acquisition offer, these issues have not been fully developed by the MPSC. All other points have been fully discussed and opposing positions clarified thus simplifying the issues to be addressed by the principals at Marianas V. In general both sides have seemingly agreed that the U.S. can acquire (by a means and price to be determined) its land requirements on Tinian, Saipan and Farallon de Medinilla. Further, that joint uses, access, and lease-backs involving these lands and some of the facilities constructed thereon would be maximized within the permissible limits of law and or mission constraints. On a number of issues not directly a part of the land negotiations (i.e., schools-utilities-job preference, etc.), the U.S. has also agreed to maximize assistance within the limits prescribed by law.

II. ISSUES THAT HAVE BEEN RESOLVED:

A. Land to be acquired by the United States -- At Marianas IV, it was agreed that the U.S. would acquire, by a method and price to be determined, 17,475± acres of land in the northern part of Tinian Island, the entire island of Farallon de Medinilla, 197± acres in Tanapag Harbor and 482± acres on the south side of the Isely Field runway.

B. Boundaries -- It has been agreed that precise boundaries, and a description of Farallon de Medinilla will be as determined by a now completed U.S. survey, the results of which will be available prior to Marianas V.

C. Joint uses on West Field -- The Marianas civilian community shall be permitted continuous joint use of the West Field runway and designated taxiways adjacent thereto, subject only to exceptions involving safety of flight, military operations and other possible longer interruptions involving national emergencies, near emergencies and construction.

D. Location and land requirements for the Civil Terminal -- Adequate lands for present and future civil terminal requirements will be made available as near to the runway and military taxiways as is practicable, along the southern boundary of the easterly end of the runway.

E. Funding for the Civilian Terminal -- The GOM shall pay the cost of terminal construction, subject to a U.S. payment of fair market value for the existing facility if the U.S. will pave aprons, parking lot and access road to meet Marianas projected, present and future needs. (cf. IV. D.)

F. Future Civil Terminal relocation contingency -- Should future military needs force relocation of the civilian terminal facilities, to include aprons and taxiways, costs of such relocation would be borne by the U.S.--use rights to the runway would continue.

G. Source of POL for Civil Terminal operations -- POL will be available from the military supply system for GOM and commercial needs related to civilian use of West Field. -- Such supply would be on a cost basis and continue until an adequate POL capability is developed by private enterprise.

H. Utility hook-ups for the Civil Terminal -- The U.S., during the planning of the base facilities and utilities will consider the needs of the civil terminal so as to make available appropriate utility hook-ups at the closest practicable locations for civil hook-ups on a properly reimbursable basis.

I. Construction interference with civil operations -- Every attempt will be made to minimize both interruptions to civil air service, and hardships resulting therefrom, that may occur during construction of the new runway.

J. Crash rescue and fire services -- The U.S. will provide aircraft and structural fire protection services as well as crash rescue services as available, subject only to charging appropriate fees to users of these services (as presented--the U.S. takes care of normal costs--the above fees are only those applicable to each use).

K. Access to and Customs services at Civil Terminal -- Access to civil terminal area will be unrestricted with security provided by civil authority. Customs inspections for the civilian terminal will be arranged by civil authorities with the military arranging for its own.

L. Medical care -- Emergency care for Tinian civilians may be provided by the military, in the absence of civilian capability whenever possible. Additionally non-emergency care may be provided where civilian capability is non-existent, subject to the capacity and capability of the staff and the availability of facilities (The nature of the base facility to be constructed --whether a hospital or dispensary--has not been decided by DOD).

M. Fire Fighting -- There will be a mutual aid agreement (similar to agreements around other bases) between the military and local community fire-fighting elements to maximize beneficial

reciprocal use of all capability at a minimum cost to either party.

N. Fishing Rights -- As a general principle, all shore-line areas in and around the northern two-thirds of Tinian shall remain open to fishermen. Exceptions are certain areas that must be closed (permanently or temporarily) due to safety, security and hazardous possibilities developing from maneuvers as well as other activity that would interfere with military activity or civil/military flight activity.

O. Beach Access -- There shall be access to beach areas in the northern two-thirds of Tinian for recreational purposes by the civilian community. They shall enjoy the same access to beaches for recreational purposes as military personnel and their dependents. DOD does not support the statement underlined (supra).

P. Base Exchange and Commissary -- Purchasing of merchandise from the base exchange and commissary is prohibited and exceptions to these laws will not be addressed.

III. ISSUES UPON WHICH WE HAVE A SUBSTANTIVE UNDERSTANDING OR A BASIS FOR AGREEMENT

A. Joint use of San Jose Port -- Both sides have agreed that there will be a joint use of San Jose port. Port operations would be initially under the full control of the military but would ultimately, by phases, become controlled by the civilian authority of the GOM. -- Costs of port development (dredging-breakwater and military piers) would be borne by the U.S., with operational and maintenance costs paid by user fees.

1. Only on the shared use of pier and adjacent land areas was there disagreement. Two alternatives were discussed that are clearly a basis for agreement:

a. Under alternative one, the U.S. will not acquire approximately 600 feet of the eastern pier and the approximately nine acres directly abutting, to permit unrestricted priority civil use and development of civil unloading and storage areas. Such adjustment by U.S. may necessitate an equivalent acquisition in another adjacent area. -- This was clearly acceptable to the Marianas delegation as their preferred position;

b. Alternative two is the same as number one except the U.S. would acquire all of the pier (and pay full restoration cost). The civil sector would then be given assured use of a berth on a "first scheduled, first served" basis. -- The Marianas delegation expressed a clear desire for the designation of one berth as primarily civil use, with full priority given to that use. They recognize that as a practical matter they would usually get such treatment under any arrangement but "for political purposes" feel they need to be able to say "this part is

ours". -- Recognizing they will get less free construction under alternative number one, they nonetheless will accept alternative two only as a compromise fallback.

2. There was agreement among U.S. participants, including DOD, that either compromise was acceptable to the U.S. However, since the Marianas representatives had by this time become fully inflexible and intransigent on the land price issue, it was deemed tactically unwise to make further peripheral concessions until the basic price issue was settled.

PROPOSED U.S. STANCE -- In discussing this issue, at the fifth session of full delegations it appears that the U.S. should continue to express a conciliatory attitude, but make no further commitment pending a settlement on price. In any event, however, this U.S. flexibility will be useful to Ambassador Williams if compromises become necessary in other areas.

B. Precise location and configuration of the Terminal Facility -- Both sides agree that base and civil planning have not sufficiently progressed to permit a full understanding on this issue. The U.S. has adopted a position of flexibility while the Marianas obviously want to retain their full range of options. They, of course, want an input and a voice in the siting and also proposed for consideration the option of having the civil terminal facility planned, and possibly even contracted as a part of the overall military planning and construction effort. Therein, the DOD would be reimbursed for the civilian share of the costs. The U.S. promised full consideration of all such possible desires within the limits of regulations. (Their pro-rata share of costs would require advance payment).

PROPOSED U.S. STANCE -- None, except to continue the above flexible approach until military and civil planning becomes more specific.

C. Utilities and utility systems -- There is general understanding of the U.S. positions that the DOD can do no more (assuming the civil community is wholly dependent on the base and makes no effort of its own) than provide the civil sector with its excess capacity and to provide in its planning for tie-in points to facilitate civil access. However, the U.S. position of maximum flexibility has been consistently reiterated. -- From the discussions it was apparent that the Marianas representatives do not have a clear position except to "get the best of all worlds". They appear to prefer civil development and ownership of their utilities, and perhaps if they could find financing may prefer to develop a civil system large enough to accommodate the military base requirements. However, when faced with realistic financing facts, as well

as the consequences of pure military development and control, they sought possible alternatives. They agreed to further investigate the following (which they proposed and the U.S. agreed was reasonable):

It appears desirable and appropriate that the utilities planning and development be done on an island-wide basis taking into account realistic and reasonable projections of present civilian population and probable commercial developments, along with the military influx. Planning accomplished by the United States would be closely coordinated with GOM planning. The Marianas would bear the cost of the civilian planning by doing the work itself or by paying the U.S. Should this approach be adopted, utilities would be developed of a sufficient size for both the military and civilian communities. That portion of the development cost attributable to that capacity in excess of military needs would be borne by the Government of the Marianas. -- The logic behind this position is that the civilian community would be assured of adequate utilities development and construction at a minimum cost to the Marianas and at no additional cost to the United States. The Marianas could, of course, choose not to participate in particular utility projects, but instead to utilize the excess military capacity when available.

Both delegations agreed that developing this basic principle requires further study and input by both parties.

It was further agreed that potable water will be made available to the U.S. on an appropriate fee basis.

PROPOSED U.S. STANCE -- The U.S. can continue its flexibility, and promise to accommodate the above joint planning and construction to the extent possible. We can also agree if: (a) they want to build the whole system; or (b) they want to depend on excess military capacity.

D. Schools -- This is a non-land issue that has consistently been injected into the land discussions. The U.S. position is clear--that we go along with joint school facilities and really have no other alternative to unsegregated civilian controlled school systems. However, there appears a strong disappointment that the DOD will not construct, and initially staff a school system (on or off post) and subsequently embrace all the school children of Tinian. The GOM faces the reality of a very difficult hurdle in building their present inadequate school system to U.S. standards by the time military dependents arrive. Even though funds become available from other federal sources they hesitate in accepting the challenge. -- They finally recognized and agreed that initial steps (i.e., raising teacher qualifications, firing unqualified administrators, etc.) and requests for U.S. assistance in other areas must be forthcoming from the GOM (who cannot shirk local political repercussions).

-- Thus it was agreed that such requests, when forthcoming would be acted upon speedily by all parties. Mr. Rice assured them that in his new job he would personally see that all reasonable requests received priority attention and would not be pigeon-holed, as the Marianas representatives alleged was often the case. U.S. law and regulations, do, however, permit the U.S. to establish a separate school if local authorities fail to provide suitable education.

PROPOSED U.S. STANCE -- Here again the Ambassador is not tied to any specifics and thus retains flexibility. --However, it appears that this is an issue that is largely the responsibility of DOI and HEW and that further discussion by OMSN would be confusing and unproductive.

E. Access to Base Movies -- On this issue the U.S. could only assure access to civilians "as guests in accordance with existing regulations". The MPSC appeared to want unrestricted access, but only until a commercial capability is developed. (Then the military would be required to shut off further access). -- It is doubtful that this issue would derail negotiations.

PROPOSED U.S. STANCE -- Any softness (by U.S.) on this point by promising to further investigate or to seek waivers from Congress or the Secretary of Defense would have a falling domino effect upon access to a myriad of other base facilities still at issue. Therefore a position of absolute firmness is indicated, stating that we cannot promise to go beyond those concessions permitted by regulations.

F. Lease-Back Arrangements -- There is general agreement that all lands not required (in the near term) for military use will be leased back for civil use. The U.S. representatives made clear that they could not agree to any precise acreages at any one time nor could we project such availability over time. We stated that initially (until runway construction began) nearly all of the lands could be leased back (short-term) and that the amount available for lease-back would progressively decrease with base development until (conceptually) none would be available in twenty to thirty years. However, the U.S. side recognized Ambassador Williams' support for long-term lease-backs in the 1,200 (approximately) acres southeast of the runway and the Marianas side seemingly accepted the proposed U.S. procedure for accomplishing this aim. Further, they seemed to accept the U.S. positions on the amount of land available. Aside from these basic agreements, contention still exists over: fee for the lease-backs; who would get first call to lands available for lease-back; restrictions and control over uses of the lease-backs; and length of lease-backs.

1. Fees for lease-backs -- The Marianas have been unwavering in their positions that all lease-backs should be at nominal fees. -- The Department of Defense position is that it cannot proposed to Congress that we pay again for land that Congress considers we already own (retention lands), only to lease them back at no fee to the GOM for its use or profitable sub-lease. -- This would equate to triple payment and there is no way we can get the U.S. Congress to buy such a subterfuge. The law requires lease-backs (when not for public use) to be made on a competitive bid basis. Public (non-profit) uses can be approved at nominal cost.

PROPOSED U.S. STANCE -- As a first step this issue can be avoided pending an agreement on price. -- When discussion becomes necessary, firm commitments should be avoided and even then it should be made clear that "consideration" of such fees are limited to the 1,200 plus or minus acres, Isely and Tanapag and DO NOT apply to other areas. To avoid possible controversy within the U.S. executive, possible embarrassment before Congress, and subsequent controversy with the GOM, we might make clear that OMSN can only support such a request to the U.S. Congress and cannot promise results.

-- As an alternative to nominal cost leasebacks, the GOM financial aid package could be sweetened by an amount equal to the approximate value of their annual nominal lease-back windfall. Such a course of action would be wholeheartedly supported by DOD and appears considerably more acceptable to the U.S. Congress.

2. To whom would the lease-backs go -- It was the clear view of the MPSC that all lease-backs would go to the GOM. The U.S. explained that U.S. law required lease-backs of federal lands to first be made available to other federal agencies, then to the local Governments, and then to other individuals. Further, if there is substantial commercial value in reference to one of these lease areas, it must then be done on a competitive basis regardless of the identity of the lessee. It was clearly pointed out that since there are no present requirements of other federal agencies, that the GOM would get first call, and their concern was therefore academic. Thereafter the Marianas delegates seemingly agreed that it may be necessary for them to agree to comply with U.S. law provided waivers can be obtained on the 1,200± acres, Tanapag and Isely. In any event they withheld final commitment until other issues are resolved.

PROPOSED U.S. STANCE -- Again as a first step, avoid further discussion pending agreement on price. -- Continue to assure them that Ambassador Williams will seek exceptions where the 1,200 plus or minus acres, Tanapag and Isely are concerned, but remain firm on adherence to U.S. law in other areas.

NOTE: DOD representatives have stated they would find it difficult to support requesting exceptions to the law on priorities for leasing-back U.S. lands, but will support Ambassador Williams' commitment on the 1,200± acres and recommend to the SECDEF that he approve the Ambassador's request for this exception.

3. Restrictions and Control over uses of the lease-backs -- Initial positions voiced by the MPSC representatives supported unrestricted discretion by the GOM in their sub-leases, so long as they met the basic restrictions of the lease-backs. -- After lengthy discussion they appeared to acquiesce to U.S. persuasion that sub-leases of federal land must be made in conformance with U.S. law (competitive bidding). Such law would fully apply to local governments doing the sub-leasing. Therefore, the U.S. must retain ultimate control particularly on the Tinian base (less 1,200 plus or minus acres). Nonetheless they did not affirm agreement on this contention and apparently plan to address it further in conjunction with other issues.

PROPOSED U.S. STANCE -- The U.S. position is clearly supportable. (Possible deviations go to the heart of U.S. control over the land). Therefore, any departure from this position appears to be unwarranted.

4. Lengths of the Lease-backs -- Here again the MPSC seemed to go along with the U.S. position that with the exception of lease-backs in the 1,200± acres, Isely and Tanapag wherein Ambassador Williams would be asked to request waivers, all other lease-backs would be no longer than five years. However, there was no firm commitment.

PROPOSED U.S. STANCE -- Again it appears advisable to avoid further discussion pending agreement on price--then adhere to current U.S. position.

NOTE: On all of the above lease-back issues MPSC appears ready to compromise as long as the U.S. meets its basic position on lease-backs in the 1,200± acres, Isely and Tanapag and agrees to some concessions in other areas (Port and Airfield).

IV. ISSUES TO BE RESOLVED (and issues that may possibly be raised)

There are several issues yet to be resolved. These are price, method of acquisition, construction of parking aprons at civil terminal, landing fees for civil aircraft, road construction, and access to base recreational facilities. Further there are two issues that have not been addressed in substance; the Coast Guard lease and the Ken Jones Ranch.

A. Price -- As yet there has been no understanding on the price to be paid for the land. The United States has clearly

presented its position and made an offer of \$11.661,400. The MPSC for their part, replied with a proposed valuation methodology that could go above \$34,274,000, and requested a U.S. evaluation of such an approach. -- The ensuing U.S. response using the MPSC methodology, but substituting standard appraisal and legal standards, and giving the Marianas every benefit of doubt, came up with \$10,529,600. The MPSC was told that the U.S. could go along with the Marianas methodology, but it should be apparent that such a course would be to the Marianas' disadvantage. They were told further that "the U.S. does not horse-trade over land values". While some small adjustments may be possible (up and down) these would not materially affect the U.S. offer of \$11.66 million. However, before the U.S. can do anything more, it must have some idea what kind of price and acquisition package the Marianas have in mind. As a result the Marianas delegation promised a counter-offer prior to Marianas V.

PROPOSED U.S. STANCE

(1) If their proposal holds promise of compromise we should seriously consider a little horsetrading, with NAVFAC and OSD I&L developing each step of the financial compromise, within the limits they think can be sold to the U.S. Congress.

Politically, the issue of nominal leaseback fees might be disposed of within an increase to the U.S. offer.

NOTE: NAVFAC has indicated that the current 11.66 million offer is the upper limit of what they feel can be value justified to the U.S. Congress and this is assuming no Congressional insistence on subtracting the value of retention rights. -- NAVFAC agrees that a larger offer is possible but must be justified on a purely political basis and in that case should, if possible, be disassociated from valuation of the land itself.

(2) If the MPSC proposal holds no immediate promise of compromise, further discussion is academic. We might reiterate the relationship between the liberal financial settlement agreed upon in the other sections of our agreement and the valuation of land. If MPSC remains inflexible it might be productive to consider recessing the talks.

B. Method of acquisition -- The U.S. position of fee simple purchase and the Marianas position of a fifty year renewable (and renegotiable) lease remains unchanged. There is no sound basis for further evaluation of United States options until we receive the Marianas counter-offer package. They inferred that the counter-offer would contained proposed terms (payments) of lease.

NOTE: On this issue, the DOD position expressed by their representatives is that: on the basis of their relations

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with Congress, the precedents of past acquisitions in other areas, and the danger of establishing a precedent that would place our "higher priority" land holdings on Guam under challenge, as well as the difficulty of living with the legal complexities posed by a U.S. lease (with lease-backs, joint uses, dealing with existing leases, etc.), they can no longer support this land acquisition through other than fee simple purchase. -- Such a position is counter to the Presidential authority given to Ambassador Williams to negotiate purchase or lease.

PROPOSED U.S. STANCE -- Considering the above and the serious controversy that could arise within the Executive Department over this issue, substantive discussions on this issue might best be delayed until a final accord on all other issues is clearly within reach.

C. Construction of parking aprons at the Civil Terminal
-- The MPSC wants the U.S. to construct and pave the aircraft parking apron, the terminal parking area for automobiles as well as the access road to the terminal. Other than the access road, a minimal apron, and a parking lot which has already been promised, the U.S. has stated that the other construction would require a waiver to military regulations and possibly an exception to U.S. law. As an alternative U.S. representatives recommended that the Marianas investigate funding assistance from other U.S. agencies such as the FAA. The TT Government could play an early role in these investigations and the military will help when appropriate. -- The discussion developed that the issue involves only the difference between what the U.S. can build under the relocation act, and the relatively large facility desired by the MPSC. -- In dollars, the difference equals approximately \$100,000 plus. While the amount is small the legal hurdles to a compromise are large. If we cannot convince them that such projects were the reasons for the \$500,000 annual sweetener in the financial package, and a compromise becomes necessary, funds other than military construction must be found.

PROPOSED U.S. STANCE -- Initially we should adhere to the current position that the U.S. will construct the best replacement facilities allowed by the Uniform Relocation Act. -- Enlargements must be funded from other sources.

D. Landing fees for civil aircraft -- The Marianas want all of the landing fee receipts civilian aircraft. This appeared to be another "tongue-in-cheek" request that they hoped to get, but realized that such was unlikely. They were told that the U.S. will not agree. -- It was explained that landing fees are for maintaining the runways and taxi-ways of the airport and must be returned to the U.S. Treasury. -- There is no U.S. objection, however, to the charging of aircraft parking fees on the civil ramps as well as terminal fees to commercial operators in order to recover their maintenance costs. -- The marked difference between Guam (Agana) and the ownership operation proposed for

West Field was discussed. The MPSC representatives seemed to understand. However, they held out here as "another item to discuss in full committee with Ambassador Williams".

PROPOSED U.S. STANCE -- We make no reply until the price issue is settled but even then we should limit discussion to a reiteration of the reasonable position already presented. There is no flexibility in the Defense position on this issue and such appears to be clearly within their operational discretion.

E. Road Construction -- The MPSC has proposed that the San Jose Village and San Jose Harbor roads should be expanded, paved, marked, and maintained by the U.S.; that other civilian sector development and maintenance could be the responsibility of either party; that the joint military civilian relations committee should determine responsibility; that if determined to be a civilian sector responsibility the committee could opt to include the exercise in the military program on a reimbursable basis; and that the civilian sector should be allowed use of military road equipment when not needed by the military. This appears to be another "tongue-in-cheek" request in order to circumvent all possible expenditures against their \$500,000 annual CIP grant. Informal conversations with their members reveal that they realize that many of these things are improbable but they are going to try up to the point where Ambassador Williams himself says no. The U.S. has pointed out that military construction can fund only those roads on the base and port and perhaps for a necessary main access artery road to the port.

PROPOSED U.S. STANCE -- Again this is an area that should be addressed with a firm no.

F. Access to other base recreational facilities -- Briefly, the MPSC wants the military to agree to free non-discriminatory access to all base recreational facilities and requests that the military community build facilities adequate to handle the military requirement as well as a projected civilian use of these facilities. The position put forward by the U.S. stated: "Current time phased base development planning suggests that the civilian community plan for continued independence and self-reliance. Since morale, welfare, and recreation facilities are constructed for, and normally are restricted to the use of active duty military personnel and their dependents and certain other eligible personnel, the use of such facilities are not normally made available to the civilian populace. Additionally, morale, welfare and recreation activities receive support from appropriated funds, military welfare funds, and other self-generated non-appropriated funds. Accordingly, eligibility for their use is stringently controlled. As a general principle the installation commander reporting through channels and as authorized as approved by appropriate authority will review each request and act within existing regulations and applicable law. Recognizing that this is a deli-

cate and sensitive area, and with the intent of fostering a cordial military-civilian interface the U.S. recommends that agreements would be premature and will not be made until such facilities are available at which time the matter will be given further serious consideration".

While the MPSC has also made this proposal with some degree of "tongue-in-cheek", they are also quite serious in their desire for unified recreational facility development. They apparently feel that if they can't use the military facilities or as a minimum assure in advance civil development along with the military, that the civil community will get no help or sympathy from the future GOM--this is one area wherein they chose to ignore the effect of population growth, immigration and tourism on such an agreement.

PROPOSED U.S. STANCE -- Initially the U.S. should continue to pursue the approach outlined above. If it becomes necessary to address the issue in further detail, DOD has indicated they can only say NO.

G. The Coast Guard Lease -- The twenty-two plus acres currently leased by the U.S. Coast Guard has not been discussed in detail, primarily because of its lesser level of importance (to MPSC) and the lethargy of the U.S. Coast Guard in clearly stating their requirements. -- Aside from the land talks the U.S. Coast Guard has subsequently stated a continuing requirement for all twenty-two acres, but continue to hedge their bets on the probable length or permanency of such requirement.

PROPOSED U.S. STANCE -- In order to do our best by the U.S. Coast Guard, when this issue arises we could propose any of the following:

1. We continue the existing Coast Guard leases until their long-range requirement picture clarifies.
2. We withdraw such discussions from OMSN purview, making it a matter of subsequent negotiations between the U.S. Coast Guard and the GOM.
3. That the U.S. will permanently acquire the land under the same terms of acquisition applicable on Tinian.

H. Ken Jones Ranch and lease -- The U.S. has made clear its position both in these talks (and to some extent to Ken Jones himself) that we prefer to address the issue of these leases after the U.S. land acquisition, and that every effort will be made to adjust the current agreement to permit his continued operation at least in the near-term. Furthermore it has been made clear that any subsequent termination must be made in a manner that minimizes costs to the U.S. taxpayer. -- The Marianas delegates listened with sympathy and seemed to agree with U.S.

logic. Nonetheless, all of their presentations and arguments, particularly on lease-backs, appear to assume the demise of the Ken Jones Ranch.

PROPOSED U.S. STANCE -- In the absence of further suggestions or pressures from the MPSC, no further discussions are indicated. If pressed, however, the U.S. might propose as an alternative (but only after the land price is negotiated) that: Marianas could break lease, paying cost out of their land payment.

AMSmith:kkc

EMRice concurrence

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