

levels of government (9). When a property owner requests a driveway, it is through police power that a state or local agency will determine the location of an allowable driveway, limits to the driveway, the methods for driveway construction, or even if the driveway can be allowed. If an agency's rules and regulations are so rigorous so as to prevent any reasonable access to the property, it is likely that it would rise to a "taking" under eminent domain rather than a use of police power. Many agencies have specific statutes that require agencies to provide reasonable access and if it is not possible to provide reasonable access to a property, the agency is typically required to acquire the access rights through a condemnation process through the authority of eminent domain.

A consideration of the application of eminent domain and the exercise of police power is especially important when acquiring and managing partial access control along non-freeways and arterials, because the governmental agencies will usually be required to apply both techniques.

#### Bundle of Sticks

In 1922, the U.S. Supreme Court introduced a concept of a bundle of sticks in relation to rights that a property owner may enjoy where each of the sticks represents common rights that flow or stay with the property (10). (see Figure 5a). The court also made it clear that some of the sticks are more important than others, with four essential types of property rights: (1) possession, (2) use, (3) exclusion of others, and (4) disposal (11).

This analogy helps to communicate how individual rights may be sold or acquired by another entity, while the property owner retains the remaining sticks in the bundles. Governments have the right of eminent domain, which allows them to take private property (one of the sticks) for public use with just compensation. (see Figure 5b). This occurs through condemnation and does not require a property owner's consent (12).

As the analogy of a bundle of sticks is applied to access, property owners that have frontage along a roadway are generally ensured of an abutter's right of access. This right can be considered one of the property rights in the bundle and, like any other right, can be conveyed to another party. In the case of the building of the Interstate Highway System, states were required to have laws that prevented direct access to properties when the highway was built to receive federal funding. The states also had to ensure that all existing direct access would be eliminated and no future direct access would be allowed to adjacent properties when existing highways were upgraded to become part of the Interstate Highway System, thus removing the right of access stick from the bundle of sticks (rights) along the frontage between the Interstate highway and the abutting property.

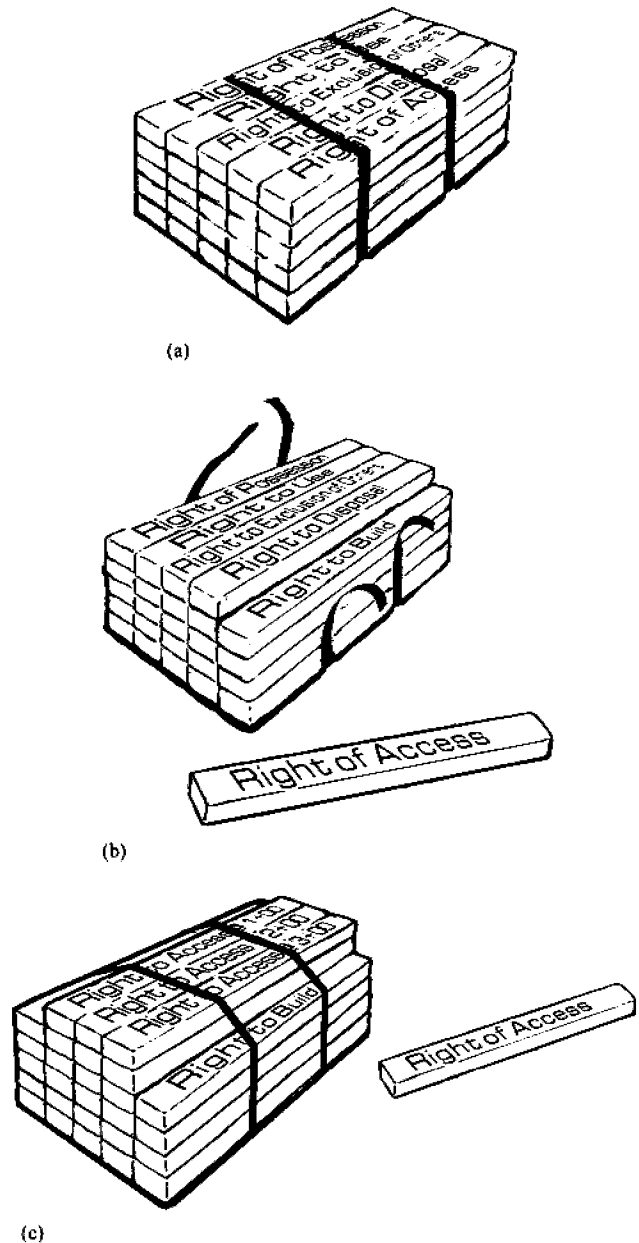


FIGURE 5 (a) Bundle of sticks, (b) Bundle of sticks: Acquisition of access rights, (c) Bundle of sticks: Disposal of access rights.

Because all access was acquired from the adjacent property owners that fronted the Interstate highway (see Figure 2), the state agency had two options: (1) leave the property landlocked or (2) provide some means of reasonable access. This was accomplished in several ways, including constructing frontage roads, securing crossover easements from neighboring properties, and constructing local street systems.

Partial access control means that the local agency has the eminent domain authority to acquire the right of access along the highway segment as necessary, but may leave openings in the access line where access to the property may be allowed. States have accomplished this in two general methods: first, by a highway designation where access is not