WHERE CAN WE GO, WHO DO WE ASK, WHAT CAN WE DO?
OUTLINE

• EASEMENTS
• RIGHT OF WAYS
• RS 2477
• Federal Land Policy Management Act
  (October 21, 1976)
• Colorado Revised Statute 43-2-201(c)
The word **Right-of-Way** only describes the right to pass through land owned by someone else for a specific purpose.

**Easement:** “The right to use land owned by another person.”
Prescriptive Easements: exist through historic use of at least 18 years. Common examples include utility lines or driveways that cross a neighboring property. These easements are not formally recorded. Prescriptive Easements require adjudication through a court of law.
Implied Easements - An implied easement is one which is not expressed in writing by the parties but can be implied from the facts surrounding the transaction. Examples of implied easements are easements by way of necessity and easements by preexisting use.
EASEMENTS

Easements by Way of Necessity – Under Colorado law, a conveyance of land from one party to another carries with it an implication that the grantor intended to convey to the grantee all easements necessary for the grantee’s beneficial and reasonable use of the property.
EASEMENTS

EASEMENTS BY PREEXISTING USE - As with an easement by way of necessity, an easement by preexisting use requires a demonstration by the grantee that at the time of the conveyance, the grantor owned both the dominant and the servient estates and that the need for the easement is great.
EASEMENTS

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EASEMENTS

Express Easements - An express easement is one created by the written agreement of the parties.

Prescriptive Easements - A prescriptive easement is a right to use another's land which is not inconsistent with the owner's use. Under Colorado law, a prescriptive easement is acquired by open and notorious, continuous and adverse use of the land for 18 years.
RS-2477 (1866)

“The right-of-way for construction of highways over public lands, not reserved for public uses, is hereby granted.”

Highway is very loosely defined and includes, frequently-traveled roads, periodically maintained roads, carriage-ways, bridle-ways, footpaths, bridges, turnpike roads, railroads, canals, ferries, or navigable rivers.
Lands in “unappropriated public domain,” and thus existing public rights-of-way fell under RS-2477. After that date, the land was “reserved for public purposes,” and there was no automatic grant of right-of-way for any roads that might develop.

**San Juan National Forest**
On June 3, 1905, Teddy Roosevelt signed a Presidential Proclamation creating almost two million acres of National Forest in southwestern Colorado.
Federal Land Policy Management Act
(October 21, 1976)

The BLM had little authority over the land until the Federal Land Policy Management Act went into effect on October 21, 1976
CRS 43-2-201(c) Colorado Prescriptive ROW

All roads over private lands that have been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years; This section requires claimant to meet a three-part test for the establishment of a public road by prescription:
(1) Members of the public must have used the road under a claim of right and in a manner adverse to the landowner's property interest;
(2) The public must have used the road without interruption for the statutory period of 20 years; and
(3) The landowner must have actual or implied knowledge of the public's use of the road and made no objection to such use. McIntyre v. Bd. of County Comm'rs, 86 P.3d 402 (Colo. 2004).
WHAT NOW?

1. USE THE TOOLS (STATUTES AND LAWS)

2. GATHER INFORMATION

3. DON'T ASK MY PARENTS FOR PERMISSION