

MAUI LAND & PINEAPPLE CO INC
Form 10-K/A
April 01, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

Amendment No. 1

(Mark One)

- ☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2007

OR

- ☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number 001-06510

MAUI LAND & PINEAPPLE COMPANY, INC.

(Exact name of registrant as specified in its charter)

HAWAII

(State or other jurisdiction of incorporation or organization)

99-0107542

(IRS Employer Identification number)

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120 KANE STREET, P. O. BOX 187, KAHULUI, MAUI, HAWAII
(Address of principal executive offices)

96733-6687
(Zip Code)

Registrant's telephone number, including area code (808) 877-3351

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, without Par Value	American Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell Company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value, as of June 29, 2007, of the voting stock held by non-affiliates of the registrant was \$151,098,000 based upon the closing price on the American Stock Exchange on such date. This computation assumes that all directors, executive officers and persons known to the Company to be the beneficial owners of more than ten percent of the Company's common stock are affiliates. Such assumption should not be deemed conclusive for any other purpose.

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At February 29, 2008, the number of shares outstanding of the registrant's common stock was 8,103,395.

Documents incorporated by reference:

Part III Certain portions of the proxy statement for the registrant's annual meeting of stockholders to be held on May 12, 2008, to be filed no later than 120 days after the close of the registrant's fiscal year ended December 31, 2007, are incorporated by reference into Part III of this report. Only those portions of the proxy statement that are specifically incorporated by reference herein shall constitute a part of this annual report.

Explanatory Note

We are filing this Amendment No. 1 to our Form 10-K originally filed with the Securities and Exchange Commission on March 17, 2008 because:

(1) Pursuant to Rule 3-09 of Regulation S-X, we are required to file separate audited financial statements of W2005 Kapalua/Gengate Hotel Holdings L.L.C., as of December 31, 2007. Such audited financial statements were not available when we filed the original Form 10-K for 2007.

(2) A complete copy of our Restated Articles of Association, amended as of May 7, 2007, was inadvertently not filed with our original Form 10-K for 2007, and is thus being filed as Exhibit 3.1 to this Amendment No. 1. The Exhibit Index has been revised accordingly.

In addition, in connection with filing of this Amendment No. 1 and pursuant to Rule 12b-15, certain certifications are attached as exhibits hereto.

Except as described above, this Amendment No. 1 does not amend any other information set forth in the Original Filing and the Company has not updated disclosures contained therein to reflect any events that occurred at a date subsequent to the date of the Original Filing.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULE

1. Financial Statements

The following Financial Statements of Maui Land & Pineapple Company, Inc. and subsidiaries and Report of Independent Registered Public Accounting Firm are included in Item 8 of this report:

Consolidated Statements of Operations for the Years Ended December 31, 2007, 2006 and 2005*
Consolidated Statements of Comprehensive Income for the Years Ended December 31, 2007, 2006 and 2005*
Consolidated Balance Sheets, December 31, 2007 and 2006*
Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2007, 2006 and 2005*
Consolidated Statements of Cash Flows for the Years Ended December 31, 2007, 2006 and 2005*
Notes to Consolidated Financial Statements*
Financial Statements of Kapalua Bay Holdings, LLC as of December 31, 2007 and 2006 (Restated) and for the Years Ended December 31, 2007, 2006 (Restated) and 2005 (exhibit 99).*
Financial Statements of W2005 Kapalua/Gengate Hotel Holdings L.L.C., as of December 31, 2007 (exhibit 99.1)**

2. Financial Statement Schedules

The following Financial Statement Schedule of Maui Land & Pineapple Company, Inc. and subsidiaries is filed herewith:

II. Valuation and Qualifying Accounts for the Years Ended December 31, 2007, 2006 and 2005.*

3. Exhibits

Exhibit No.

- 3.1** Restated Articles of Association, as amended May 7, 2007.
- 3.2 Bylaws (Amended as of December 11, 2003) (Filed as Exhibit 3.1(ii) to Amendment No. 1 to Registration Statement on Form 8-A/A, File No. 001-06510, filed January 5, 2004, and incorporated herein by reference).
- 3.4 Articles of Amendment to Restated Articles of Association. (Filed as Appendix A to Schedule 14A, filed March 21, 2007, and incorporated herein by reference).
- 4.1 Amended and Fourth Restated Revolving Credit Agreement between Bank of Hawaii, First Hawaiian Bank, Central Pacific Bank, American AgCredit, PCA, and Bank of Hawaii, as Agent for the Lenders., dated as of May 17, 2005 (Filed as Exhibit 4 to Form 10-Q for the quarter ended June 30, 2005 and incorporated herein by reference).
- 4.2

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Bridge Loan Agreement between Pacific Coast Farm Credit Services, ACA and Maui Land & Pineapple Company, Inc., dated December 30, 1998. (Filed as Exhibit 4.2(i) to Form 10-K for the year ended December 31, 1998 and incorporated herein by reference).

- 4.3 Revolving line of Credit Loan Agreement between American AgCredit, FLCA, successor in interest to Pacific Coast Farm Credit Services, ACA and Maui Land & Pineapple Company, Inc., dated as of September 1, 2005 (Filed as Exhibit 4 to Form 10-Q for the quarter ended September 30, 2005 and incorporated herein by reference).
- 4.4 First Amendment to Revolving Line of Credit Loan Agreement between American AgCredit, FLCA, successor in interest to Pacific Coast Farm Credit Services, ACA and Maui Land & Pineapple Company, Inc., dated December 4, 2006 (Filed as Exhibit 10.1 to Form 8-K filed December 19, 2006 and incorporated herein by reference).
- 10.1 Second Amended and Restated Hotel Ground Lease (The Ritz-Carlton, Kapalua) between Maui Land & Pineapple Company, Inc. (Lessor) and RCK Hawaii, LLC dba RCK Hawaii-Maui (Lessee), effective as of January 31, 2001 (Filed as Exhibit 10.2(i) to Form 10-K for the year ended December 31, 2000 and incorporated herein by reference).

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Exhibit No.

- 10.2 Executive Deferred Compensation Plan (revised as of 8/16/91) (Filed as Exhibit (10)A to Form 10-Q for the quarter ended September 30, 1994 and incorporated herein by reference).
- 10.3 Supplemental Executive Retirement Plan (effective as of January 1, 1988) (Filed as Exhibit (10)B to Form 10-K for the year ended December 31, 1988 and incorporated herein by reference).
- 10.4 Restated and Amended Change-In-Control Severance Agreement (Warren A. Suzuki, Vice President/Land Management), dated as of March 16, 1999 (Filed as Exhibit 10.3 (viii) to Form 10-K for the year ended December 31, 1998 and incorporated herein by reference).
- 10.5 Executive Severance Plan, as amended through November 6, 1998 (Filed as Exhibit 10.3 (x) to Form 10-K for the year ended December 31, 1998 and incorporated herein by reference).
- 10.6 Employment Agreement effective as of October 6, 2003 by and between Maui Land & Pineapple Company, Inc. and David C. Cole (Filed as Exhibit 10.3(viii) to Form 10-K for the year ended December 31, 2003 and incorporated herein by reference).
- 10.7 Maui Land & Pineapple Company, Inc. Stock Option Agreement for David Cole, dated October 6, 2003 (Filed as Exhibit 10.3 (ix) to Form 10-K for the year ended December 31, 2003 and incorporated herein by reference).
- 10.8 Maui Land & Pineapple Company, Inc. Restricted Share Agreement for David Cole, dated October 6, 2003 (Filed as Exhibit 10.3(x) to Form 10-K for the year ended December 31, 2003 and incorporated herein by reference).
- 10.9 Maui Land & Pineapple Company, Inc. 2006 Equity and Incentive Award Plan (Incorporated by reference to Appendix B of the Definitive Proxy Statement on Schedule 14A filed on March 27, 2006).
- 10.10 Kapalua Bay Hotel & Villas, Purchase and Sale Agreement and Escrow Instructions, Between YCP Kapalua L.P. and YCP Kapalua Operator, Inc., collectively, as seller, and Maui Land & Pineapple Company, Inc. as Purchaser, as of April 30, 2004 (Filed as Exhibit 10(A) to Form 10-Q for the quarter ended June 30, 2004 and incorporated herein by reference).
- 10.11 Limited Liability Company Agreement of Kapalua Bay Holdings, LLC, dated August 31, 2004 (Filed as Exhibit 10(A) to Form 10-Q for the quarter ended September 30, 2004 and incorporated herein by reference).
- 10.12 First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions, entered into as of August 6, 2004, by and among YCP Kapalua L.P., and YCP Kapalua Operator, Inc., and Maui Land & Pineapple Company, Inc. (Filed as Exhibit 10(B) to Form 10-Q for the quarter ended September 30, 2004 and incorporated herein by reference).
- 10.13 Termination of Hotel Ground Lease, effective as of August 31, 2004 (Filed as Exhibit 10I to Form 10-Q for the quarter ended September 30, 2004 and incorporated herein by reference).
- 10.14 Settlement Agreement and Release of All Claims (Board of Water Supply of the County of Maui vs. Shell Oil Company, et al.) (Filed as Exhibit 10.5(i) to Form 10-K for the year ended December 31, 1999 and incorporated herein by reference).
- 10.15 Purchase and Sale Agreement effective as of March 14, 2006, by and between Maui Land & Pineapple Company, Inc. and David C. Cole and Margaret Cole (Filed as Exhibit 10 to Form 10-Q for the quarter ended March 31, 2006 and incorporated herein by reference).
- 10.16 Construction Loan Agreement between Kapalua Bay Holdings, LLC, and Lehman Brothers Holdings, Inc. (Filed as Exhibit 10.1 to Form 8-K filed July 20, 2006 and incorporated herein by reference).
- 10.17 Fee and Leasehold Mortgage, Security Agreement and Fixture Filing made by Kapalua Bay, LLC in favor of Lehman Brothers Holdings, Inc. (Filed as Exhibit 10.2 to Form 8-K filed July 20, 2006 and incorporated herein by reference).
- 10.18 Promissory Note issued by Kapalua Bay, LLC to Lehman Brothers Holdings, Inc. (Filed as Exhibit 10.3 to Form 8-K filed July 20, 2006 and incorporated herein by reference).
- 10.19 Completion Guaranty made by Maui Land & Pineapple Company, Inc., The Ritz-Carlton Development Company, Inc. and Exclusive Resorts Development Company, LLC in favor of Lehman Brothers Holdings, Inc. (Filed as Exhibit 10.4 to Form 8-K filed July 20, 2006 and incorporated herein by reference).
- 10.20 Recourse Guaranty made by Maui Land & Pineapple Company, Inc., The Ritz-Carlton Development Company, Inc. and Exclusive Resorts Development Company, LLC in favor of Lehman Brothers Holdings, Inc. (Filed as Exhibit 10.5 to Form 8-K filed July 20, 2006 and incorporated herein by reference).
- 10.21 Amendment to Stock Option Agreement dated August 7, 2006, by and between Maui Land & Pineapple Company, Inc. and David C. Cole (Filed as Exhibit 10.1 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.22 Restricted Stock Award Agreement and Award Grant Notice, dated as of August 4, 2006, by and between Maui Land & Pineapple Company, Inc. and David C. Cole (Filed as Exhibit 10.2 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).

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- 10.23 Stock Option Agreement and Stock Option Grant Notice, dated as of August 4, 2006, by and between Maui Land & Pineapple Company, Inc. and David C. Cole (Filed as Exhibit 10.3 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.24 Amendment to Stock Option Agreement, dated as of August 7, 2006, by and between Maui Land & Pineapple Company, Inc. and Brian C. Nishida (Filed as Exhibit 10.4 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.25 Employment Agreement, dated August 4, 2006, by and between Maui Land & Pineapple Company, Inc. and Robert I. Webber (Filed as Exhibit 10.5 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.26 Restricted Stock Award Agreement and Award Grant Notice, dated as of August 7, 2006, by and between Maui Land & Pineapple Company, Inc. and Brian C. Nishida (Filed as Exhibit 10.6 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.27 Restricted Stock Award Agreement and Award Grant Notice, dated as of August 4, 2006, by and between Maui Land & Pineapple Company, Inc. and Robert I. Webber (Filed as Exhibit 10.7 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.28 Restricted Stock Award Agreement and Award Grant Notice, dated as of August 4, 2006, by and between Maui Land & Pineapple Company, Inc. and Fred W. Rickert (Filed as Exhibit 10.8 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.29 Form of Award Grant Notice and Stock Option Agreement, pursuant to the Maui Land & Pineapple Company, Inc. 2006 Equity and Incentive Award Plan (Filed as Exhibit 10.9 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.30 Form of Restricted Stock Award Grant Notice and Restricted Stock Award Agreement, pursuant to the Maui Land & Pineapple Company, Inc. 2006 Equity and Incentive Award Plan (Filed as Exhibit 10.10 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.31 First Amendment to Purchase and Sale Agreement, dated as of August 7, 2006, by and between Maui Land & Pineapple Company, Inc. and David C. Cole (Filed as Exhibit 10.11 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.32 Purchase and Sale Agreement, dated August 7, 2006, by and between Maui Land & Pineapple Company, Inc. and Duncan MacNaughton (Filed as Exhibit 10.12 to Form 10-Q for the quarter ended June 30, 2006 and incorporated herein by reference).
- 10.33 Termination of Purchase and Sale Agreement dated August 7, 2006 between Duncan MacNaughton and Maui Land & Pineapple Company, Inc. (Filed as Exhibit 10.1 to Form 10-Q for the quarter ended September 30, 2006 and incorporated herein by reference).
- 10.34 Separation of Employment Agreement between Thomas Juliano and Kapalua Land Company, Ltd., dated October 24, 2006 and effective as of November 3, 2006 (Filed as Exhibit 10.2 to Form 10-Q for the quarter ended September 30, 2006 and incorporated herein by reference).
- 10.35 Promissory Note issued by Maui Land & Pineapple Company, Inc. in favor of GE Capital Public Finance, Inc., dated September 29, 2006 (Filed as Exhibit 10.1 to Form 8-K filed October 5, 2006 and incorporated herein by reference).
- 10.36 Guaranty Agreement made by Maui Land & Pineapple Company, Inc. in favor of GE Capital Public Finance, Inc., dated September 29, 2006 (Filed as Exhibit 10.2 to Form 8-K filed October 5, 2006 and incorporated herein by reference).
- 10.37 Loan Agreement (Real Estate) between Bank of Hawaii and Maui Land & Pineapple Company, Inc., dated October 1, 2006 (Filed as Exhibit 10.1 to Form 8-K filed November 2, 2006 and incorporated herein by reference).
- 10.38 Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing made by Maui Land & Pineapple Company, Inc. in favor of Bank of Hawaii, dated October 1, 2006 (Filed as Exhibit 10.2 to Form 8-K filed November 2, 2006 and incorporated herein by reference).
- 10.39+ Sale, Purchase and Lease Termination Agreement, entered into on March 28, 2007. (Filed as Exhibit 10.1 to Form 10-Q for the quarter ended March 31, 2007 and incorporated herein by reference).
- 10.40+ Second Amended and Restated Limited Liability Company Agreement of W2005 Kapalua/Gengate Hotel Holdings L.L.C., entered into on March 28, 2007 (Filed as Exhibit 10.2 to Form 10-Q for the quarter ended March 31, 2007 and incorporated herein by reference).
- 10.41 Termination of Memorandum of Hotel Ground Lease, dated as of March 28, 2007 (Filed as Exhibit 10.3 to Form 10-Q for the quarter ended March 31, 2007 and incorporated herein by reference).
- 10.42 Option Agreement dated August 6, 2007 between Maui Land & Pineapple Company, Inc. and Robert I. Webber (Filed as Exhibit 10.1 to Form 10-Q for the quarter ended June 30, 2007 and incorporated herein by reference).

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Exhibit No.

10.43+	Exclusive Consignment and Marketing Agreement with Calavo Growers, Inc. and Maui Pineapple Company, Ltd. Entered into on November 2, 2007.
10.44*	First Amendment to Consignment and Marketing Agreement with Calavo Growers, Inc., entered into on November 2, 2007.
10.45	Loan Agreement between Maui Land & Pineapple Company, Inc., Wells Fargo Bank, National Association, and each of the Financial Institutions Signatory thereto, Entered into on November 15, 2007 (Filed as Exhibit 10.1 to Form 8-K filed November 19, 2007 and incorporated herein by reference).
10.46	Fee and Leasehold Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, Entered into on November 15, 2007 (Filed as Exhibit 10.2 to Form 8-K filed November 19, 2007 and incorporated herein by reference).
10.47	Consulting Agreement between Maui Land & Pineapple Company, Inc., and BC&G International LLC, entered into on April 9, 2007 (Filed as Exhibit 10.1 to Form 8-K filed April 13, 2007 and incorporated herein by reference).
10.48	Securities Purchase Agreement between Maui Land & Pineapple Company, Inc., and Ohana Holdings, LLC and ZG Ventures, LLC entered into on March 12, 2007 (Filed as Exhibit 10.1 to Form 8-K filed March 15, 2007 and incorporated herein by reference).
10.49	Registration Rights Agreement between Maui Land & Pineapple Company, Inc. and Ohana Holdings, LLC and ZG Ventures, LLC entered into on March 12, 2007 (Filed as Exhibit 10.2 to Form 8-K filed March 15, 2007 and incorporated herein by reference).
10.50**	Amendment No. 1 to Registration Rights Agreement, entered into as of March 10, 2008.
11.	Statement re computation of per share earnings. See Earnings Per Common Share under Note 1 to the Consolidated Financial Statements.
21.*	Subsidiaries of Maui Land & Pineapple Company, Inc.
23.1*	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm, dated March 14, 2008.
23.2*	Consent of Deloitte & Touche LLP, Independent Auditors, dated March 14, 2008.
23.3**	Consent of PricewaterhouseCoopers LLP, Independent Certified Public Accountants, dated March 31, 2008.
31.1**	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) / 15d-14(a) of the Securities Exchange Act of 1934.
31.2**	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) / 15d-14(a) of the Securities Exchange Act of 1934.
32.1***	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
99.*	Financial Statements of Kapalua Bay Holdings, LLC as of December 31, 2007 and 2006 (Restated) and for the Years Ended December 31, 2007, 2006 (Restated) and 2005.
99.1**	W2005 Kapalua/Gengate Hotel Holdings L.L.C. Consolidated Financial Statements December 31, 2007.

* Previously filed with the Form 10-K filed on March 17, 2008.

** Filed herewith.

*** Furnished herewith and not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

Management contract or compensatory plan or arrangement required to be filed as an exhibit to this Form pursuant to Item 15(c) of Form 10-K.

+ Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24-b-2 of the Exchange Act. The omitted material has been separately filed with the Securities and Exchange Commission.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on March 31, 2008.

MAUI LAND & PINEAPPLE COMPANY, INC.

By

/s/ DAVID C. COLE
DAVID C. COLE
President & Chief Executive Officer