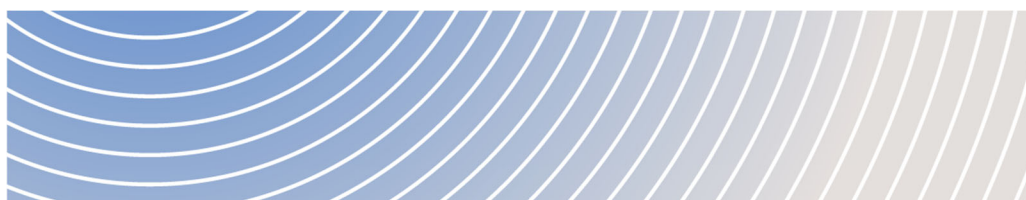




Impact Assessment
Agency of Canada

Agence d'évaluation
d'impact du Canada

Analysis Report



WHETHER TO DESIGNATE THE WINDFALL MINING PROJECT IN
QUEBEC PURSUANT TO THE *IMPACT ASSESSMENT ACT*

August 2026



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Purpose

The Impact Assessment Agency of Canada (IAAC) prepared this report for consideration by the President of IAAC in his response to the request to designate the Windfall Mining Project (the project), proposed by the Windfall Mining Group Inc. (the proponent), a subsidiary of Gold Fields, pursuant to section 9 of the *Impact Assessment Act* (IAA).

Context of request

On October 19, 2026, the Minister of Environment, Climate Change and Nature (the Minister) received a request for designation from the Conseil de la Nation Anishnabe de Lac Simon [Council of the Anishnabe Nation of Lac Simon] (the requester). The letter included a request for an impact assessment of the Windfall Mining Project by IAAC. The requester raised concerns regarding the potential effects of the project on the environment and components within federal jurisdiction, as well as its cumulative effects. The letter also outlined concerns about the impacts on the Nation Anishnabe de Lac Simon [Anishnabe Nation of Lac Simon] and its asserted land rights, the lack of a federal impact assessment of the project, the scope of the project in relation to the thresholds set out in the *Physical Activities Regulations* (the Project List) and dissatisfaction with the province's consultation process as part of the environmental and social impact assessment and review process conducted by the Environmental and Social Impact Review Committee (COMEX). In addition, the requester was concerned about the possible expansion of the Windfall Mining Project in conjunction with mineral exploration activities at the neighbouring site, Urban Barry, which are being carried out by the same proponent.

Before beginning its analysis of the request for designation, IAAC contacted the proponent on June 2 to inform it of the request and ask for information about the project. IAAC also contacted Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC), Transport Canada (TC) and Natural Resources Canada (NRCan) to verify whether any authorizations had been issued or whether the project had received any funding.

On July 3, 2026, IAAC also contacted the Nation Anishnabe de Lac Simon (the requester), the Cree First Nation of Waswanipi, the Oujé-Bougoumou Cree Nation and the Conseil des Atikamekw d'Opitciwan [Opitciwan Atikamekw Council] to obtain their comments. IAAC has received responses from the Conseil de la Nation Anishnabe de Lac Simon.



Project context

Project overview

The proponent is proposing the construction, operation and eventually the closure of a new underground gold mine. The project is located in the Nord-du-Québec [Northern Quebec] administrative region, on territory governed by the James Bay and Northern Quebec Agreement (JBNQA), to which the Cree Nation holds treaty rights, as well as on territories to which the Nation Anishnabe de Lac Simon and the Atikamekw Nation, respectively, assert Aboriginal rights (Figure 1). The project would have an ore production capacity of 4,950 tonnes per day over a period of approximately 10 years. The project would include, among other things, two underground access ramps (tunnels), an ore processing plant with an ore input capacity of 4,080 tonnes per day, a paste fill plant, a tailings management facility, a waste rock stockpile, a mine water treatment plant (for industrial water and mine effluent) and a camp for approximately 600 workers.

Project components and activities

The project will be carried out in three phases—construction, operation and mine closure.

The main components of the project include:

- Underground mine;
- Ore processing plant
- Tailings filtration plant;
- Paste fill plant;
- Waste rock stockpile;
- Tailings stockpile
- Ore stockpile;
- Water management infrastructure (ponds, water treatment plant, ditches, pipes and polishing basin);
- One camp for approximately 600 workers;
- Two portals (Main and Lynx) and underground ramps.

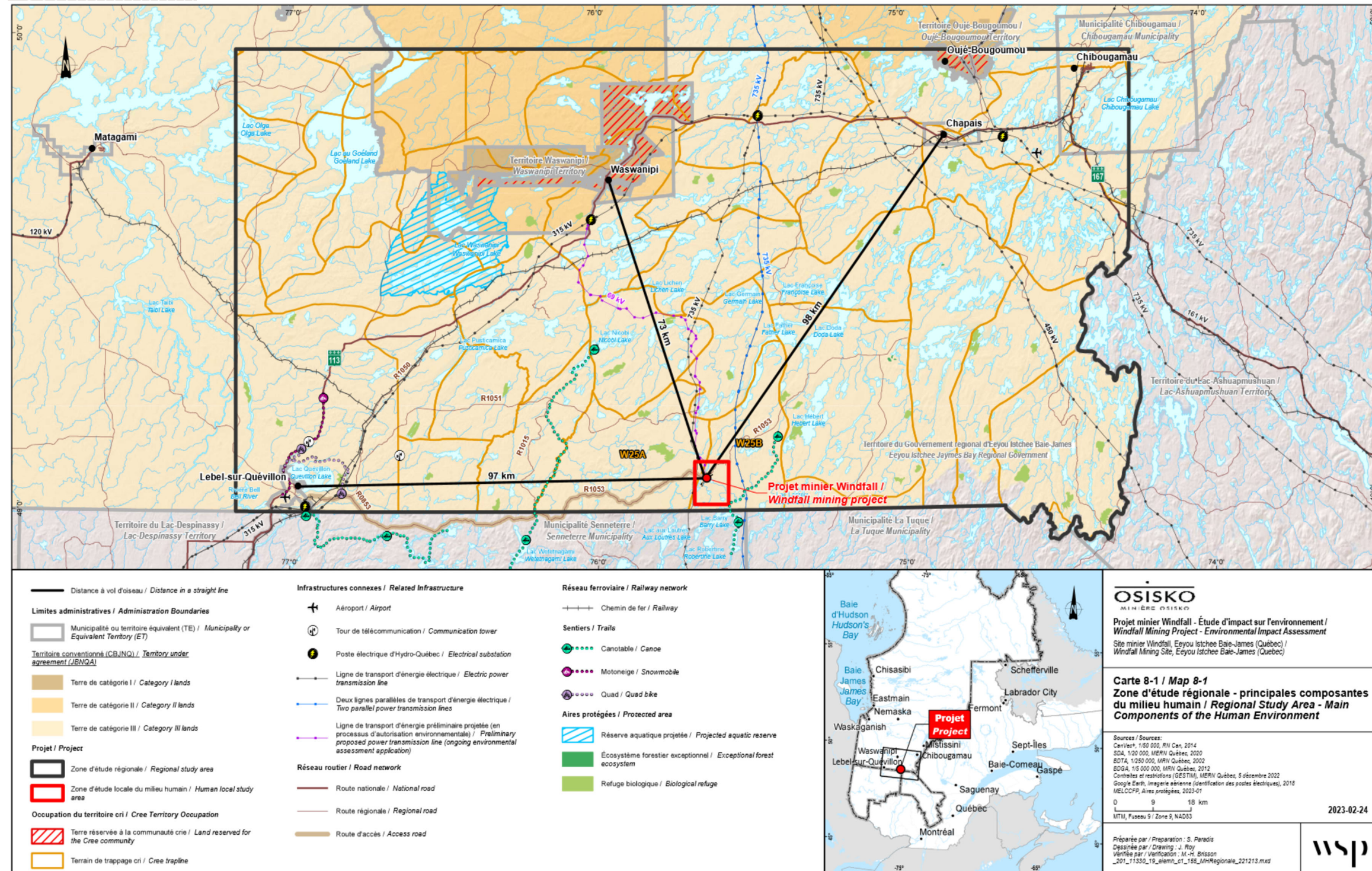


Figure 1: Map showing the location of the Windfall Mining Project

Description: The Windfall Mining Project is located 97 kilometres east of Lebel-sur-Quévillon, 73 kilometres northeast of Waswanipi and 98 kilometres northwest of Chapais.

Source: Map 8-1 of the proponent's impact statement, available at: <https://comexqc.ca/wp-content/uploads/EIA-Windfall-Final-ENG-Vol1b.pdf>



Analysis of the designation request

Authority to designate the project

The *Physical Activities Regulations* (the Project List) under the IAA identify the physical activities that constitute designated projects and, as such, are subject to Canada's impact assessment process. Pursuant to paragraphs 18(c) and 18(d), the construction, operation, decommissioning and closure of a new metal mine with an ore production capacity of 5,000 tonnes per day or more and/or a new metal mill with an ore input capacity of 5,000 tonnes per day or more are included in the Project List. The project, as described in the information provided by the proponent, includes a new metal mine with an ore production capacity of less than 5,000 tonnes per day and a new metal mill plant with an ore input capacity of less than 5,000 tonnes per day.

Under subsection 9(1) of the IAA, the Minister may, by order, designate a physical activity that is not prescribed in the Project List if, in the Minister's opinion, the physical activity may cause adverse effects within federal jurisdiction or direct or incidental adverse effects.

In accordance with subsection 9(2) of the IAA, in deciding whether to make an order, if the Minister is of the opinion that the carrying out of the physical activity may cause adverse effects within federal jurisdiction or direct or incidental adverse effects, the Minister may consider public concerns related to the adverse effects within federal jurisdiction or the direct or incidental adverse effects that may be caused by the carrying out of the physical activity, the adverse impacts that the physical activity may have on the rights of the Indigenous Peoples, and whether a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects within federal jurisdiction and the direct or incidental adverse effects that may be caused by the carrying out of the physical activity.

Under subsection 9(7) of the IAA, the Minister cannot designate a physical activity if the carrying out of the physical activity has substantially begun, or a federal authority has exercised a power or performed a duty or function conferred on it that could permit the physical activity to be carried out in whole or in part. No work has been done as part of the project, and no powers, duties or functions have been conferred.

Under subsection 154(1) of the IAA, the Minister may, subject to any terms and conditions that the Minister specifies, delegate to IAAC any powers, duties and functions that the Minister is authorized to exercise or perform under this Act. On July 24, 2026, the Minister



of Environment delegated the powers under section 9 of the IAA related to designation requests to the IAAC President.

IAAC is of the view that the President may consider designating the project pursuant to subsection 9(1) of the IAA, as the project is not included on the List of Projects; the carrying out of the project has not substantially begun, and no federal authority has exercised a power or performed a duty or function that would permit the project to be carried out, in whole or in part.

Existing legislative mechanisms

Key federal and provincial legislative mechanisms that are, or could be, relevant to the project are summarized below.

Federal legislative mechanisms

Fisheries Act

The Fish and Fish Habitat Protection Program of DFO reviews projects for their impacts to fish and fish habitat to ensure compliance with the *Fisheries Act* and *Species at Risk Act* (SARA). Through this program, DFO may provide information to the proponent that would enable it to avoid and mitigate the negative impacts of the project to fish and fish habitat.

A *Fisheries Act* authorization would be required if the project is likely to cause the harmful alteration, disruption or destruction of fish habitat and/or is likely to result in the death of fish. When such an authorization is issued, it includes legal conditions to avoid, reduce and offset the effects of the project, as well as to monitor these effects and the effectiveness of the mitigation and offsetting measures. The application procedure for authorization includes consultations with Indigenous communities. The Minister of Fisheries and Oceans must consider the adverse impacts of his/her decision (pursuant to paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*) on the rights of Indigenous Peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*. An application for authorization under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act* is being reviewed by DFO for this project.

In addition, ECCC administers subsection 36(3) of the *Fisheries Act*, which prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations or other federal legislation.

Metal and Diamond Mining Effluent Regulations

The *Metal and Diamond Mining Effluent Regulations* (MDMER) help protect Canada's lakes and rivers by setting strict limits on the quality of effluent that can be discharged by metal and diamond mines. MDMER authorizes, under certain circumstances, the



discharge of effluent into water frequented by fish and places referred to in subsection 36(3) of the *Fisheries Act*. Effluent must meet concentration-based limits for arsenic, copper, cyanide, lead, nickel, zinc, suspended solids, radium 226 and unionized ammonia. Effluent must also have a pH that is between the specified limits and must not be acutely lethal to aquatic organisms. MDMER also requires effluent testing and reporting, as well as studies to monitor the environmental effects.

MDMER also allows the use of water bodies frequented by fish for the disposal of mine waste under certain circumstances. Authorization requires an amendment to Schedule 2 to MDMER. Mine owners or operators may request such an amendment, which designates a water body frequented by fish as a tailings impoundment area. The regulatory amendment process includes consultations with Indigenous communities. According to ECCC, the provisions of MDMER apply to the project. However, an application for authorization has not been submitted by the proponent regarding a Schedule 2 amendment for the project.

Migratory Birds Convention Act, 1994

The *Migratory Birds Convention Act, 1994* (MBCA) protects migratory birds, their eggs and their nests, wherever they may be found. The MBCA prohibits the disturbance or destruction of migratory birds' nests and eggs. It also prohibits the discharge of harmful substances into waters or areas frequented by migratory birds, or into any place from which such substances may enter those waters or areas.

In addition, nests of species listed in Schedule 1 to the *Migratory Birds Regulations, 2022* (MBR 2022) are protected at all times. However, the regulations provide a mechanism to exempt these nests when the unoccupied nest has been reported to ECCC and the nest remains unoccupied by a migratory bird for the period indicated in Schedule 1 for that species. In certain limited situations, MBR 2022 also authorizes the issuance of permits to relocate or destroy a nest when it contains a live bird or egg, or, for species listed in Schedule 1 to MBR 2022, before the end of the designated waiting period.

Species at Risk Act

For non-aquatic species listed in Schedule 1 to SARA as Extirpated, Endangered or Threatened, a permit may be required from ECCC (i.e., under section 73 of SARA) for activities that affect a listed terrestrial wildlife species or any part of its critical habitat or the residences of its individuals, where those prohibitions are in place. Such permits may only be issued if all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted; all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and, if the activity will not jeopardize the survival or recovery of the species.



Canadian Navigable Waters Act

The *Canadian Navigable Waters Act* (CNWA) authorizes and regulates interference with the public's right to navigation. The main purpose of the CNWA is to regulate works and obstructions that could interfere with navigation in Canadian navigable waters. The Navigation Protection Program (NPP) is responsible for the administration and enforcement of the CNWA. Program services are provided by TC.

The CNWA prohibits certain activities that may interfere with navigation in navigable waters, including the throwing or depositing of materials in navigable waters and activities that lower the water level of navigable water to a level that extinguishes navigation. The Governor in Council may exempt a watercourse from these prohibited activities if the Governor in Council is satisfied that it would be in the public interest.

The CNWA prohibits, without prior approval, the construction or installation of any work in navigable waters that might interfere with the public right of navigation.

TC determines, before issuing an exemption or approval, whether there is a duty to consult and accommodate Indigenous groups affected by the prohibited activities.

According to TC, the project may require an application for exemption or approval under the CNWA.

Provincial legislative mechanisms

Environment Quality Act and the James Bay and Northern Québec Agreement (JBNQA)

Since the project is located on JBNQA territory, it is subject to the environmental and social protection regime set out in section 22 of the JBNQA and implemented by the Quebec *Environment Quality Act* (EQA). This regime provides for a process for assessing and reviewing environmental and social impacts to minimize the adverse effects of development on the Indigenous population and on the territory's wildlife resources. The process consists of two main steps: the assessment of the project by the Environmental and Social Impact Evaluating Committee (COMEV), followed by the review of the project by the Environmental and Social Impact Review Committee (COMEX).

COMEV is an advisory body composed of members appointed by the governments of Quebec, Canada and the Cree Nation. It examines the preliminary information provided by the proponent in order to make recommendations to the provincial Administrator regarding whether the project should be subject to the process. When a project is deemed to be subject to the process, such as new mining operations, COMEV also recommends, in the form of a directive, the nature, scope and extent of the environmental impact statement



that the proponent is required to prepare, particularly involving consultations with the local populations and Indigenous communities likely to be affected¹.

The provincial Administrator, following COMEV's recommendation, issued a revised² directive to the proponent of the Windfall Mining Project in January 2022.

Once the impact statement has been submitted, COMEX, a joint committee made up of representatives appointed by the Cree Nation Government and the Government of Quebec, is mandated to conduct an environmental assessment of the project—in this case, the Windfall Mining Project—and to recommend to the provincial Administrator, i.e., the Deputy Minister of the Environment, the Fight Against Climate Change, Wildlife and Parks of the Government of Quebec, whether the project should receive or be denied authorization. Where applicable, COMEX recommends the conditions under which the project could be authorized, specifying the appropriate preventive or corrective measures if necessary.

During the review phase, the public and Indigenous communities were given the opportunity to submit their comments to COMEX. COMEX also held public hearings and engaged in other forms of consultation to better understand the concerns of the public³ and Indigenous communities and to take traditional Indigenous Knowledge into consideration.

Documents relating to the environmental and social impact assessment and review process for the Windfall Mining Project are available on the Registre des évaluations environnementales [environmental assessments registry]⁴ and on the COMEX website⁵.

Potential adverse effects within federal jurisdiction

IAAC's analysis identified that the carrying out of the project may cause potential adverse effects within federal jurisdiction and direct or incidental adverse effects, as defined in section 2 of the IAA. To do so, it took into account the impact statement documents submitted to COMEX as part of the environmental and social impact assessment and review process, as well as the additional information received from the requester and the proponent. As outlined below, IAAC is of the view that the existing legislative mechanisms

¹ The document entitled "Consultations Conducted by the Proponent: Expectations of the Review Committee" is available at: <https://comexqc.ca/participation-publique/consultations-par-le-promoteur/>

² The directive for the Windfall Mining Project is available at the following link: https://comexqc.ca/wp-content/uploads/Df_2021_Windfall_3214-14-059.pdf [in French only]

³ The COMEX document "Directive on the Public Participation" is available at the following link: <https://comexqc.ca/en/participation-publique/information-generale/>

⁴ https://www.ree.environnement.gouv.qc.ca/projet.asp?no_dossier=3214-14-059 [in French only]

⁵ <https://comexqc.ca/fiches-de-projet/projet-minier-windfall/>



provide a framework to address potential adverse effects within federal jurisdiction and direct or incidental adverse effects.

Fish and fish habitat

The project could have adverse effects on fish and fish habitat due to habitat alteration or loss caused by mining infrastructure and hydrological changes. The project would require the capture of groundwater and the diversion of runoff from the project site, which would result in a loss of 1,859 square metres of fish habitat.⁶ Pond 1 and water bodies SN3 and SN6 (Figure 2 in Annex 1) would be affected by the drawdown of the water table caused by mine dewatering, and would no longer receive groundwater input. However, Pond 1 and Water Body SN3 would receive mine effluent water. In addition, the discharge of mine effluent could affect the water quality of the fish habitat. However, the requirements established by MDMER and Directive 019 sur l'industrie minière du Québec [directive 019 on the mining industry in Quebec] and implemented under the COMEX process aim to prevent the harmful effects of mining activities on fish and fish habitat.

The requester has raised concerns about the effects of the project on fish and fish habitat, as well as on water quality and the hydrographical network, including eskers.

Adverse effects on fish and fish habitat are also assessed in the application for authorization under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*, which is currently being reviewed by DFO. The deposit of effluent into water frequented by fish and places referred to in subsection 36(3) of the *Fisheries Act* must comply with MDMER, which is administered by ECCC. In addition, effects on the aquatic environment and wildlife are assessed as part of the provincial environmental and social impact assessment and review process conducted by COMEX.

In light of this information, IAAC is of the opinion that existing federal and provincial legislative and regulatory mechanisms administered by other authorities—notably the *Fisheries Act*, SARA, MDMER, Directive 019 sur l'industrie minière du Québec and the COMEX process—provide a framework for addressing the potential adverse effects that the project is likely to have on fish and fish habitat.

Aquatic species

The project is not likely to result in changes affecting aquatic species other than fish, as defined in subsection 2(1) of SARA, because the project is located hundreds of kilometres from the marine environment and therefore cannot affect marine plants.

⁶ Information taken from the answer to question QC-74 in the first series of COMEX questions, available at the following link: <https://www.ree.environnement.gouv.qc.ca/dossiers/3214-14-059/3214-14-059-42.pdf>



Migratory birds

The project could have adverse effects on migratory birds due to disturbance caused by noise and human activity, as well as the increased risk of collisions with vehicles and infrastructure and the associated mortality. The land clearing required for the project could also result in habitat loss affecting the Common Nighthawk, Olive-sided Flycatcher, Canada Warbler, Bald Eagle and Rusty Blackbird.

The requester has also raised concerns about the effects of the project on species at risk in general.

Potential adverse effects on birds are assessed as part of the provincial environmental and social impact assessment and review process conducted by COMEX. It takes into account the potential effects on birds and focuses on the protection of migratory birds during the nesting season. At the federal level, proponents must comply with the provisions of the MBCA and the MBR 2022 when carrying out activities that could harm migratory birds, their eggs or their nests, and the provisions of SARA for species at risk.

In light of this information, IAAC is of the opinion that the existing federal and provincial legislative and regulatory mechanisms administered by other authorities—notably the MBCA, MBR 2022, SARA and the COMEX process—provide a framework for addressing the potential adverse effects that the project is likely to have on migratory birds.

Federal lands

The project is located on public lands in the domain of the State (i.e., the province of Quebec), which do not constitute federal lands within the meaning of the IAA. As a result, no adverse effects are anticipated on federal lands.

Pollution of boundary, interprovincial and international waters

The project is located hundreds of kilometres upstream of the marine environment and international and interprovincial waters. IAAC is of the view that the project is unlikely to cause pollution that would result in significant adverse changes to boundary, interprovincial or international waters as defined in section 2 of the IAA.

Indigenous Peoples

Current use of lands and resources for traditional purposes by Indigenous Peoples and the physical and cultural heritage of Indigenous Peoples (including structures,



sites or things of historical, archaeological, paleontological or architectural significance to Indigenous Peoples)

The project could uncover or alter archaeological or historical remains during stripping and construction work. As part of the environmental and social impact assessment and review process conducted by COMEX, Cree users identified cultural sites, including current or former camps and burial sites located outside the local study area. The requester, the Conseil de la Nation Anishnabe de Lac Simon, also indicates that its traditional and currently occupied territory contains many ecological, cultural and spiritual sites of significance to its members.

The project could also have adverse effects on the current use of lands and resources for traditional purposes, including the disruption of hunting activities, including goose hunting, fishing, trapping and gathering; the loss or displacement of certain areas for practising traditional activities; the perceived or actual alteration of the quality of available food resources; the alteration of cultural practices and the traditional experience in the territory; and users' adaptation to the presence of the mine. These effects were notably documented in the proponent's environmental and social impact statement, submitted to COMEX, for the Cree users of traplines W25B and W25A⁷.

The requester also raised concerns about the potential effects of the project on the exercise of its rights in its ancestral territory, particularly in relation to navigable waters, fish and fish habitat, and land use. The requester indicated that at least two Anishnabek families were already feeling the effects of the proponent's mineral exploration activities on their family territory (Aki), mainly because of the increased traffic and the loss of tranquility in the territory. It also disputed the proponent's assertion in its response to its submission to COMEX that its territory would not be directly affected by the project, on the basis that no Anishnabe activities had been recorded in the local study area.

The project could also have effects on caribou, a species at risk that is culturally important to Indigenous Peoples. The Nation Anishnabe de Lac Simon, the requester, voluntarily suspended its traditional practice of caribou hunting in order to promote the survival and recovery of the species, in the hope of being able to resume this use in the future.

These potential adverse effects are assessed as part of the provincial environmental and social impact assessment and review process conducted by COMEX. This process takes into account impacts on access to, and use and occupancy of, hunting, fishing, trapping and gathering areas, as well as potential effects on archaeological sites and sites of cultural interest.

⁷ COMEX, *Windfall Mining Project – Environmental Impact Assessment*, Vol. 1B, Chap. 4, Section 4.3.1, March 29, 2023: <https://comexqc.ca/en/fiches-de-projet/projet-minier-windfall/>



IAAC is also of the opinion that the federal mechanisms that apply or would apply to the project include measures enabling some of the potential negative impacts of the project on Indigenous Peoples to be addressed. In particular, authorization have to be obtained for the project under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*; this process have to take into account the potential negative impacts on Indigenous Peoples related to fishing. The application procedure for authorization includes the consultation of Indigenous communities.

IAAC is of the opinion that the process conducted by COMEX, combined with the applicable federal legislative mechanisms (*Fisheries Act*, MBCA, SARA and CNWA), provides a framework for addressing the potential negative impacts of changes to the environment on Indigenous Peoples.

Health, social and economic conditions

The project could lead to adverse changes in the health conditions of Indigenous Peoples, notably because of the deterioration in air quality and the real or perceived contamination of water, fish, game or other harvested resources. The requester raised concerns about surface water and groundwater quality, particularly the potential contamination of eskers, which could reduce access to high-quality drinking water. The requester was also concerned about the increase in traffic, the risk of collisions and the risks associated with the transportation of hazardous materials, such as spills.

The project could also bring about adverse changes in social conditions, particularly because of the reduced sense of safety of users of access roads, potential effects related to the increased presence of workers in the region and possible impacts on the psychological well-being of Indigenous workers, including concerns related to work-family balance. The requester also raised concerns about its members' safety, particularly that of Indigenous women, who are reported to frequently travel through the area.

Economically, the proponent expected that the project would generate employment, training, contracting and business opportunities for the Indigenous communities. The Conseil des Atikamekw d'Opitciwan, Waswanipi et Oujé-Bougoumou [Council of Opitciwan, Waswanipi and Oujé-Bougoumou Atikamekw] have expressed interest in taking advantage of these opportunities. However, the proponent acknowledges that the closure of the project could have adverse effects on jobs and the local economy. The requester also raised concerns about job losses, as well as the potential consequences of a premature termination or closure of the project on training and requalification needs.

These adverse effects are assessed as part of the provincial environmental and social impact assessment and review process conducted by COMEX. This process takes into account the negative social impacts of the project, including the impacts on the health of land users and on jobs. IAAC is of the opinion that the COMEX process provides a framework for addressing the adverse changes to the health, social and economic conditions of Indigenous Peoples that the project could cause.



Direct or incidental adverse effects

Direct or incidental adverse effects refer to effects that are directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity.

The project, as described, requires, but is not limited to, an authorization under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*. IAAC is of the opinion that the existing federal and provincial legislative mechanisms administered by other authorities, notably COMEX, provide a framework for addressing the direct or incidental adverse effects that the project could cause and that would be related to the powers, duties or functions described above.

Public concerns

Public concerns are outlined in Chapter 4 of the proponent's impact statement⁸ submitted as part of the provincial environmental and social impact assessment and review process conducted by COMEX. The concerns raised relate, in particular, to economic benefits and impacts on the quality of life and well-being of local stakeholders, and do not involve adverse effects within federal jurisdiction.

Potential adverse impacts on the section 35 rights of Indigenous Peoples

The project is located on Eeyou Istchee Baie-James territory, governed by the JBNQA, on Category III lands, where the Cree hold collective hunting, fishing and trapping rights. More specifically, the project is located on Cree trapline W25B (Figure 2 in Annex 1), associated with the Cree First Nation of Waswanipi and near trapline W25A. Traplines are recognized territorial units in the organization of traditional Cree activities, including hunting, fishing and trapping.

The project is also located in territories claimed by the Nation Atikamekw d'Opitciwan [Atikamekw d'Opitciwan Nation] and the Nation Anishnabe de Lac Simon. The Atikamekw comprehensive land claim was accepted for negotiation by the Government of Canada, leading to the signing of a framework agreement. Further negotiations are currently underway, with a view to signing an agreement in principle. Over the years, the Algonquin Nations of Quebec, including the Nation Anishnabe de Lac Simon (the requester), have

⁸ COMEX, *Windfall Mining Project – Environmental Impact Assessment*, Vol. 1B, Chap. 4, Table 4-7, March 29, 2023: <https://comexqc.ca/en/fiches-de-projet/projet-minier-windfall>



also filed claims and assertions concerning their Indigenous rights, Aboriginal title and land use, including areas that overlap with part of the territory governed by the JBNQA. The requester asserts that the project is located on its unceded ancestral, and currently occupied, territory and partially overlaps with that territory.

The requester asserts that the project is likely to adversely affect the continued occupation and use of its ancestral territory by its families, notably because of the fragmentation of the territory, the increased pressure on areas that it uses to practise activities, and concerns about the protection of water, resources and sites of cultural significance. The requester is of the opinion that these changes could limit the exercise of Aboriginal rights and their transmission to future generations. It also believes that the failure to take into account its esker protection protocol could limit its ability to exercise its governance responsibilities over the territory and its resources.

IAAC recognizes that the project could have potential adverse impacts on the rights of Indigenous Peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*. These potential impacts could result from changes in access to the territory, in opportunities to exercise traditional activities on the territory in a safe and culturally significant way, and in the resources and sites required for the exercise and transmission of these rights. There could also be potential impacts on the ability of Indigenous Peoples to participate in decisions regarding the protection and use of their territory and its resources, which occurs in a context where the cumulative effects of past, present and reasonably foreseeable future activities could exacerbate the impacts on their rights.

IAAC has taken into account the concerns expressed by the requester, as well as the available information on the rights of Indigenous Peoples likely to be affected by the project. As part of the provincial environmental and social impact assessment and review process, COMEX conducted public consultations, including public hearings. The requester submitted its concerns to COMEX. The proponent also consulted the Indigenous communities likely to be affected, including those that are not parties to the JBNQA, including the requester.

IAAC notes that, since the project is subject to this provincial process conducted by COMEX, the Government of Quebec is responsible for consulting and, if necessary, accommodating Indigenous Peoples when the provincial decisions envisaged are likely to have an adverse impact on their Aboriginal or treaty rights. The relevant federal authorities are also required to fulfill this obligation, where applicable, in connection with any federal decision or authorization that may be required.

Accordingly, IAAC is of the opinion that the federal mechanisms that apply or would apply to the project include measures to address the project's potential adverse impacts on the rights of Indigenous Peoples insofar as those impacts are related to the relevant federal decisions or authorizations. Notably, the project must obtain authorization under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*, which must take into account



potential impacts on the exercise of Indigenous Peoples' rights related to fishing. This application for authorization procedure includes consultation with Aboriginal communities.

In light of this information, IAAC believes that existing the legislative and regulatory mechanisms administered by other authorities—notably the process conducted by COMEX and the process set out under the *Fisheries Act*—provide a framework for addressing the adverse impacts that the project is likely to have on the rights of Indigenous Peoples.

Other factors considered

Cumulative effects

The project, combined with past, present and reasonably foreseeable future projects, including mineral exploration projects such as Urban Barry, forestry activities and linear projects (power lines, logging roads and roads), could result in cumulative effects, such as the loss of migratory bird habitat as well as the loss of habitat for, and disturbance of, species valued by Indigenous groups, such as caribou and moose. The project could also have cumulative effects on the traditional use of the land and resources by Indigenous communities due to the fragmentation and loss of use of the territory, increased nuisance effects (noise, light and vehicle traffic), and increased pressure on wildlife resources as the workers in the various projects obtain access to the land.

The requester raised concerns regarding the potential cumulative effects of forestry, mining, recreation and tourism, energy and road development on Anishnabeg family lands. According to the requester, these activities had already contributed to the fragmentation and disruption of the territory and to reduced opportunities for use and occupation by its members. The requester is concerned that the project may exacerbate this fragmentation, further reduce access to certain sites and interrupt the continuity of hunting, fishing, trapping and gathering activities. The requester is also concerned about the potential cumulative effects on water, wildlife habitats and sites of cultural significance, as well as about the increase in traffic and pressure on the territory.

The directive for the Windfall Mining Project⁹, which is included in the COMEX process, outlines how the proponent should take account of the project's contribution to cumulative effects in the impact statement. Consequently, the proponent assessed the cumulative effects of the project in its impact statement and determined that the planned mitigation measures would address the effects on wildlife and their habitat, including migratory birds, and on the traditional use of the territory and resources by Indigenous communities.

⁹ The directive for the Windfall Mining Project is available at the following link: https://comexqc.ca/wp-content/uploads/Df_2021_Windfall_3214-14-059.pdf [in French only]



IAAC reviewed the information provided by the requester, as well as by the proponent in the impact statement submitted to COMEX, regarding the effects referred to in subsections 9(1) and 9(2) of the IAA. It is of the opinion that the existing legislative and regulatory mechanisms administered by other authorities, particularly the process conducted by COMEX, provide a framework for addressing the cumulative effects.

Malfunctions and accidents

The requester expressed concerns about potential effects caused by malfunctions or accidents, such as spills of hazardous materials related to transport, that could affect the area's water network. A malfunction or accident could cause adverse effects within federal jurisdiction.

As part of the provincial environmental and social impact assessment and review process, COMEX requires the proponent to conduct a risk analysis on major technological accidents, to include scenarios for each type of major technological accident envisaged, planned safety measures and a preliminary emergency response plan. The risk analysis, safety measures and emergency response plan help to avoid potential adverse federal effects by reducing the likelihood and magnitude of the accidents that are likely to cause those effects and by supporting a timely response to address the residual effects.

In light of this information, IAAC is of the opinion that the existing legislative and regulatory mechanisms administered by other authorities, including the process conducted by COMEX, provide a framework for addressing adverse effects within federal jurisdiction that could be caused by accidents and malfunctions.

Regional and strategic assessments

There are no regional or strategic assessments pursuant to sections 92, 93 or 95 of the IAA that are relevant to the project.

Conclusion

IAAC considered the information it received as part of the designation request process for the project to inform its analysis. Input was sought and received from the proponent and requester. IAAC also considered the public documents submitted as part of the provincial environmental and social impact assessment and review process conducted by COMEX.

The project has the potential to cause adverse effects in federal jurisdiction and direct or incidental adverse effects.

IAAC considered the factors in subsection 9(2) of the IAA and is of the view that:



- a) the requirements set out under the following legislative mechanisms identified in paragraph (b), some of which include consultation with Indigenous Peoples and public engagement, provide a framework for addressing any adverse impacts that the project may have on the Aboriginal and treaty rights of Indigenous Peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*; and
- b) there are means other than a federal impact assessment, including federal and provincial legislative mechanisms administered by other authorities (including the Government of Canada's *Fisheries Act* and the COMEX process), that provide a framework for addressing potential adverse effects within federal jurisdiction and direct or incidental adverse effects, as described in subsection 9(1) of the IAA.

IAAC also acknowledges the other concerns raised by the requester, particularly in relation to the exploration activities carried out at the Urban Barry site. However, the Urban Barry site is not part of the Windfall Mining Project and activities at this site are in the exploratory phase.

Annex 1: Locations of water bodies and traplines potentially impacted by the project

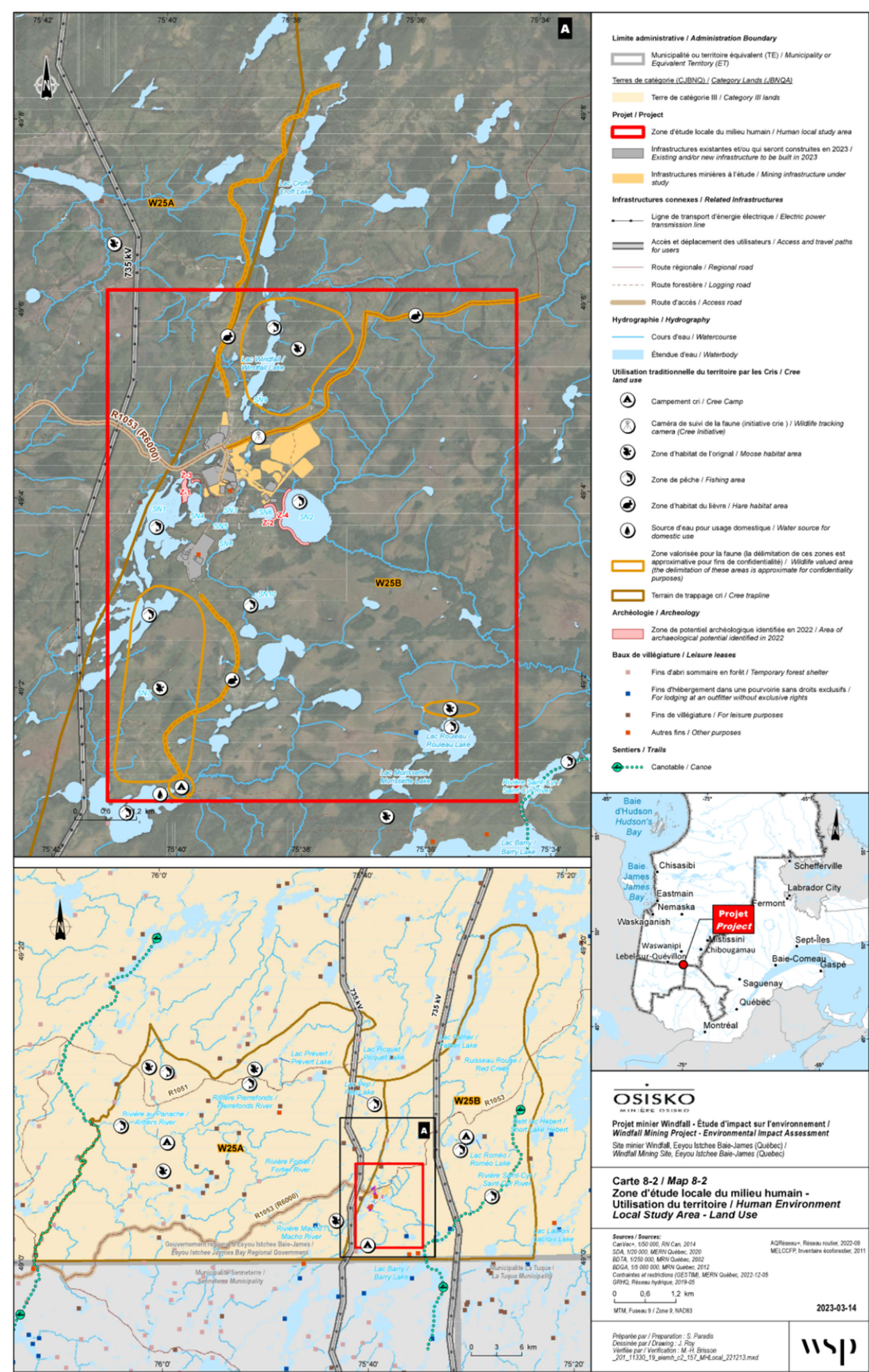


Figure 2: Map showing the location of water bodies SN2 and SN3. Pond 1 is located north of SN3. The map also shows the location of traplines W25A and W25B.

Source: Map 8-2 of the proponent's impact statement submitted to COMEX available at the following link: <https://comexqc.ca/wp-content/uploads/EIA-Windfall-Final-ENG-Vol1b.pdf>